SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 54

ACEL C. ALEXANDER, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

COSDEN PIPE LINE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

Pleas and proceedings before the Honorable Edgar S. Vaught, Judge of the District Court of the United States for the Western District of Oklahoma, presiding in the following-entitled cause:

COSDEN PIPE LINE COMPANY, A CORPORATION,
PLAINTIFF,

vs.

A. C. ALEXANDER, DEFENDANT.

Law No. 3399.

Petition.

Comes now the above named plaintiff, Cosden Pipe Line Company, and for its several causes of action against the above named defendant, A. C. Alexander, alleges:

First Cause of Action.

1. That the plaintiff is, and was during all of the times hereinafter mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, with its principal place of business in the City of Tulsa, County of Tulsa, in said State.

2. That said defendant was from July 1, 1921 to June 30, 1921, and is now and has been since March 1, 1923, Collector of Internal Revenue for the United States for the District of Oklahoma, and had and has his office as such Collector in Oklahoma City, in Oklahoma County, in said State, and that said defendant now resides at 112 West 7th Street, in the said City of Oklahoma City, in said County and State.

3. That the matters in controversy herein arise under and require the construction of the Act of Congress of Feb-

ruary 24, 1919 (40 Stat. 1008), commonly known as the Revenue Act of 1918.

4. That the plaintiff corporation was organized primarily and has existed solely for the purpose of gathering and delivering crude oil to the refinery owned and operated at West Tulsa, Oklahoma, by Cosden & Company, an Oklahoma corporation; that plaintiff, since its organization and up to the present time, has constructed, maintained and operated a system of pipe lines connected with said Refinery of Cosden & Company and running to various oil fields within the State of Oklahoma; that during all of said times all the capital stock of plaintiff has been owned by said Cosden & Company, and plaintiff has been under the absolute control of said Cosden & Company and all the business of said plaintiff has been conducted solely and exclusively for and in connection with the business of said Cosden & Company, which business has at all said times been to operate an oil refinery at West Tulsa, Oklahoma, and that the organization of the plaintiff corporation, for the purpose of owning and operating a system of pipe lines to gather and furnish oil to the refinery of said Cosden & Company, was made necessary and desirable by virtue of the Constitution and laws of the State of Oklahoma, and particularly those relating to the right of eminent domain and those making owners of oil pipe lines common carriers and common purchasers of oil.

5. That plaintiff has not at any time since its organization, and particularly during the period from Nov. 1, 1917, to Dec. 31, 1921, inclusive been a public or common carrier or transporter of oil for hire in its said system of pipe lines, or any part thereof, nor has plaintiff during said times been a public utility furnishing services or facilities for hire with respect to the transportation of oil in its said system of pipe lines, or any part thereof, within the meaning of subdivision (e) of Section 500 and subdivisions (c) and (d) of Section 501 of the Act of Congress of February 24, 1919, commonly called the Revenue Act of 1918, and that all of the oil transported by plaintiff through its said system of pipe lines during said period of time was necessary for the use of said Cosden Pipe Line Company and Cosden & Company in the conduct of their business as the owner and operator of said refinery at West Tulsa, Oklahoma, and that

all of the oil so transported during said period of time was intended to be used by said Cosden & Company in its said refinery, and has been so used. That no rates or tariffs were or have been legally fixed by public authority or were established voluntarily by plaintiff for moving or transporting oil through its said pipe lines, during said period of time and for the purposes herein set out; that at all times hereinafter mentioned plaintiff has owned, maintained, used and operated its said system of pipe lines and is now
11 maintaining, using and operating the same solely and exclusively as an incident and appurtenant to the refinery of Cosden & Company at West Tulsa, Oklahoma, and that at all of said times the said system of pipe lines owned, maintained and operated by plaintiff, and the said refinery at West Tulsa, Oklahoma, owned and operated by said Cosden & Company, have constituted and now constitute a single enterprise and said system of pipe lines comprise an integral part of the refinery of said Cosden & Company for the production and refining of petroleum; and that by reason of the facts herein alleged plaintiff was not at any time, and is not now, subject to or liable for any tax under said subdivision (e) of Section 500 or subdivisions (c) and (d) of Section 501 of the Act of Congress of February 24, 1919, commonly called the Revenue Act of 1918.

6. That if it be the fair construction of said subdivision (e) of Section 500 and subdivisions (c) and (d) of Section 501 of the Act of Congress of February 24, 1919, commonly called the Revenue Act of 1918, that the Congress of the United States has attempted thereby to provide for the taxation of said movement of oil through plaintiff's said system of pipe lines, from Nov. 1, 1917 to Dec. 31, 1921, inclusive, as herein set forth, as appurtenant and incident to the refinery of Cosden & Company, then said sections and said attempted taxation are unconstitutional and void because such tax would be a direct tax (other than a tax upon income), but not apportioned among the several states according to their respective numbers or laid in proportion to the census or enumeration, all in violation of the third clause of Section 2 of Article I and of the fourth clause of Section 9 of Article I of the Constitution of the United States.

7. That if it be the fair construction of said subdivision (e) of Section 500 and of subdivisions (c) and (d) of Sec-

tion 501 of the Act of Congress of February 24, 1919, commonly called the Revenue Act of 1918, that the Congress of the United States has attempted thereby to provide for the taxation of said movement of oil through plaintiff's said system of pipe lines, from Nov. 1, 1917, to Dec. 31, 1921, inclusive, as herein set forth as appurtenant and incident to the refinery of Cosden & Company, then said sections and said attempted taxation are unconstitutional and void because said sections provide that the tax shall be computed on a basis to be determined by the Commissioner of Internal Revenue, in violation of Section 1 of Article I and of the first clause of Section 8 of Article I of the Constitution of the United States.

8. That if it be the fair construction of said subdivision (e) of Section 500 and of subdivisions (c) and (d) of Section 501 of the Act of Congress of February 24, 1919, commonly called the Revenue Act of 1918, that the Congress of the United States attempted thereby to provide for the taxation of said movement of oil through plaintiff's said system of pipe lines, as herein set forth, as appurtenant and incident to the refinery of Cosden & Company, then said sections and said attempted taxation are unconstitutional and void because they are in contravention of the "due process of law" clause of the Fifth Amendment to the Constitution of the United States.

9. That notwithstanding the matters hereinbefore alleged said defendant, as such Collector, did unlawfully and wrongfully require plaintiff to make monthly returns under oath, in duplicate, from July, 1921, to June, 1922, inclusive, in the form and manner prescribed by Section 502 of the Revenue Act of 1918, and by the regulations promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, said defendant unlawfully and wrongfully asserting that a tax was due from said plaintiff under and pursuant to said subdivision (e) of Section 500 and subdivisions (c) and (d) of Section 501 of the Act of Congress of February 24, 1919, commonly called the Revenue Act of 1918, on account of the movement of oil by plaintiff through its said system of pipe lines, as hereinbefore alleged, during said period of time, and demanding that said plaintiff, in and by said demanded returns, return as taxable the total amount of oil moved through said system of pipe lines

during each and every month from April, 1921, to June, 1921, notwithstanding all of said oil was moved under the conditions hereinbefore set forth, and not otherwise;
13 that said assertions and claims and demands of said defendant, as such Collector, were wrongful, unlawful and illegal, and that said plaintiff was not at any time, and is not now, liable to a tax under said Revenue Act of the movement of said oil, or any part thereof, during said period of time, or required by law to make any returns with respect thereto, and that said requirements of said defendant, as such Collector, for the making of such returns by plaintiff and for the payment of said tax was unlawful, wrongful and illegal and without right; but notwithstanding the assertions, claims and demands of said defendant were unlawful, wrongful and illegal, as hereinbefore alleged, plaintiff, in order to protect its rights and to prevent the imposition of severe penalties under said Revenue Act and the distraint of its property in connection with the collection of said unlawful, wrongful and illegal tax, was forced and compelled to comply with said wrongful, unlawful and illegal demands of said defendant, and that plaintiff did during each of the months from July, 1921, to June, 1922, under protest and in compliance with said wrongful, unlawful and illegal demands of said defendant as such Collector, make and file with said defendant, as such Collector, monthly returns as required by said Collector, in the form and manner prescribed by said Revenue Act of 1918, and the regulations promulgated by the Commissioner of Internal Revenue, as aforesaid.

10. That notwithstanding the matters hereinbefore alleged, there was thereupon illegally, unlawfully and without warrant or authority of law levied and assessed against said plaintiff taxes in the amounts hereinafter specified for each and every month during said period of time from July, 1921, to June, 1922, inclusive, as and for a tax alleged to be due from plaintiff under and pursuant to said subdivision (e) of Section 500 and subdivisions (c) and (d) of Section 501 of the Revenue Act of 1918; and that said defendant, as such Collector, demanded payment of said taxes from plaintiff, and that thereupon plaintiff paid to said defendant, as such Collector, illegal taxes in the amount hereinafter set forth, and that said taxes were collected illegally, un-

lawfully and without warrant or authority of law, and that no part thereof has been returned to said plaintiff. That the illegal taxes paid by plaintiff to said defendant, as such Collector, from July, 1921 to June, 1922, inclusive, pursuant to the wrongful, unlawful and illegal demands of said defendant, as such Collector, in the manner hereinbefore set forth, were for the months and in the amounts as follows, to-wit:

June, 1921	$6,503.84
July, 1921	5,559.00
August, 1921	8,897.39
September, 1921	9,629.23
October, 1921	8,798.10
November, 1921	6,979.35
December, 1921	7,022.74
Total	$52,887.65

11. That thereafter, on February 26, 1923, plaintiff duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, its claim for refund for said sum so erroneously and illegally collected; that said claim for refund was duly made on the form and in accordance with the rules and regulations adopted by said Commissioner of Internal Revenue and approved by the Secretary of the Treasury, and that in and by said claim for refund said plaintiff asked for refund of said taxes upon the ground that the same was wrongfully, unlawfully and illegally collected and said claim for refund was duly subscribed and sworn to be a proper officer of said plaintiff in the manner provided by law.

12. That said claim for refund was disallowed by the Commissioner of Internal Revenue on June 9, 1924.

13. That the defendant is indebted to plaintiff by reason of the unlawful, wrongful and illegal exaction and collection of said taxes from plaintiff in the sum of $52,887.65, with interest thereon at the rate of six per cent per annum.

Wherefore, plaintiff prays for judgment of this Honorable Court against said defendant on its first cause of action:

For the sum of $6,503.84, with interest thereon at the rate of six per cent per annum from July 27, 1921;

For the sum of $5,550.00, with interest thereon at the rate of six per cent per annum from August 27, 1921;

For the sum of $8,807.89, with interest thereon at the rate of six per cent per annum from September 27, 1921;

For the sum of $9,620.23, with interest thereon at the rate of six per cent per annum from October 27, 1921;

For the sum of $8,798.10, with interest thereon at the rate of six per cent per annum from November 26, 1921;

For the sum of $6,979.35, with interest thereon at the rate of six per cent per annum from December 27, 1921;

For the sum of $7,022.74, with interest thereon at the rate of six per cent per annum from January 27, 1922;

And for the costs of this action, and for such other and further relief as it is in law entitled.

Second Cause of Action.

1. Plaintiff, for its second cause of action against the defendant, reiterates and adopts the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of its first cause of action herein.

2. Plaintiff further alleges that notwithstanding the matters hereinbefore alleged, and that there had theretofore been wrongfully, unlawfully, illegally and without warrant or authority of law levied and assessed against said plaintiff taxes in the sum of $255,329.30 from November, 1917, to December 31, 1921, inclusive, as and for a tax alleged to be due under subdivision (e) of Section 500 and subdivisions (c) and (d) of Section 501 of the Revenue Act of 1918, there was illegally, unlawfully and without warrant or authority of law levied and assessed against said plaintiff an additional tax in the sum of $235,977.26, covering the transportation of oil through its system of pipe lines from November 1, 1917, to December 31, 1921, inclusive, as and for a tax alleged to be due from plaintiff under and pursuant to said subdivision (e) of Section 500 and subdivisions (c) and (d) of Section 501 of the Revenue Act of 1918, and that said defendant, as such Collector, on June 28, 1924, demanded

payment of said additional tax in the sum of $235,977.26 under penalty that if the same was not paid within ten days from said date said defendant, as such Collector, would issue a warrant of distraint against the property of plaintiff for the collection of said additional tax in the sum of $235,977.26, and that said plaintiff, in order to protect its rights and to prevent the imposition of severe penalties under
16 said Revenue Act and the distraint of its property in the collection of said unlawful tax, was forced and compelled to comply with the wrongful, unlawful and illegal demands of said defendant, as such Collector, and did, on July 10, 1924, paid to said defendant, as such Collector, the sum of $235,977.26, and that said additional tax in the sum of $235,977.26, was collected illegally, unlawfully and without warranty or authority of law, and that no part thereof has been returned to plaintiff.

3. That thereafter, on October 3, 1924, plaintiff duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, its claim for refund for said sum so erroneously and illegally collected; that said claim for refund was duly made on the form and in accordance with the rules and regulations adopted by said Commissioner of Internal Revenue and approved by the Secretary of the Treasury, and that in and by said claim for refund said plaintiff asked for refund of said taxes upon the ground that the same were wrongfully, unlawfully and illegally collected and said claim for refund was duly subscribed and sworn to by a proper officer of said plaintiff in the manner provided by law, and which said claim for refund is still pending before the Commissioner of Internal Revenue.

4. That the defendant is indebted to plaintiff by reason of the unlawful, wrongful and illegal exaction and collection of said taxes from plaintiff in the sum of $235,977.26, with interest thereon at the rate of six per cent per annum from July 10, 1924.

Wherefore, plaintiff prays for judgment of this Honorable Court against the defendant on its second cause of action in the sum of $235,977.26, with interest thereon at the rate of six per cent per annum from the 10th day of July, 1924, and

for the costs of this action, and for such other and further relief as it is in law entitled.

J. C. DENTON,
R. H. WILLS,
Tulsa, Oklahoma,
Attorneys for Plaintiff.

State of Oklahoma, County of Tulsa—ss.

D. W. Moffitt, of lawful age, being first duly sworn, 17 deposeth and saith: That he is Vice President of Cosden Pipe Line Company, a corporation duly organized and existing under and by virtues of the laws of the State of Oklahoma; that said corporation is the plaintiff named in the foregoing petition; that he has read the statements contained in the foregoing petition, and that the same are true, as he verily believes.

D. W. MOFFITT.

Subscribed and sworn to before me this 5th day of June, 1926. (Seal) M. Oppenheimer, Notary Public. My Commission expires June 27, 1929.

Endorsed: Filed in District Court on June 5, 1926.

Answer.

Comes now the defendant in answer to the petition 18 of the plaintiff herein and admits the allegations in paragraphs 1, 2 and 3, but the defendant denies generally and specifically each and every and all of the other allegations in said petition contained.

Wherefore, the defendant asks that plaintiff take nothing and that said defendant recover his costs herein expended.

ROY ST. LEWIS, Attorney for Defendant.

Endorsed: Filed in District Court on July 1, 1926.

Stipulation Waiving Jury.

We, the attorneys for the respective parties, hereby 19 waive the trial to a jury of this cause and agree to

submit the same to the Court without the intervention of a jury.

J. C. DENTON,
R. H. WILLS,
Attorneys for Plaintiff.

ROY ST. LEWIS,
Attorney for Defendant.

Endorsed: Filed in District Court on April 4, 1930.

Motion for Judgment.

Comes now the defendant and moves the Court that judgment be given for the defendant, because

1. The plaintiff has failed to sustain the burden imposed upon it to prove that all or part of the taxes sought to be recovered back in this proceeding were wrongfully or unlawfully collected;

2. There is not sufficient evidence to support a judgment against the defendant.

ROY ST. LEWIS,
United States Attorney,
CHARLES T. HENDLER,
Special Attorney, Internal Revenue,
Attorneys for Defendant.

Endorsed: Filed in District Court on June 30, 1930.

Order.

Now, on this 15th day of December, 1930, the above entitled cause coming on for hearing upon the motion of the above named plaintiff for leave to file herein an amended and supplemental petition to conform to the evidence introduced upon the trial of said cause, and said plaintiff appearing by its attorney, R. H. Wills, and the defendant appearing by Roy St. Lewis, United States Attorney, and the Court being fully advised in the premises;

It is, therefore, ordered, adjudged and decreed that said plaintiff be and it is hereby granted leave and permission to file herein within two days an amended and supplemental

petition to conform to the evidence introduced upon the trial of said cause, a copy of which said petition is attached to the aforesaid motion, to all of which said defendant excepts, and its exception is hereby allowed.

EDGAR S. VAUGHT, United States Judge.

Endorsed: Filed in District Court December 15, 1930.

Amended and Supplemental Petition.

Comes now the above named plaintiff, Cosden Pipe
22 Line Company, and having first obtained leave of Court to file herein an amended and supplemental petition against the above named defendant, Acel C. Alexander, Collector of Internal Revenue for the District of Oklahoma, to conform to the evidence introduced upon the trial of the above entitled cause, for said amended and supplemental petition states and alleges:

1: That said plaintiff is, and has been during all of the times hereinafter mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, with its principal place of business in the City of Tulsa, Oklahoma.

2: That said defendant was, from July 1, 1921, to June 30, 1922, and is now, and has been since March 1, 1923, Collector of Internal Revenue for the United States for the District of Oklahoma, and had and has his office as such Collector in Oklahoma City, in Oklahoma County, in said State, and that said defendant now resides at #112 West Seventh Street in said City, County and State.

3: That the matters in controversy herein arise under and require the construction of the Act of Congress of October 3, 1917 (40 Stat. 300), commonly known as the Revenue Act of 1917, and also the Act of Congress of February 24, 1919 (40 Stat. 1057), commonly known as the Revenue Act of 1918.

4: That said plaintiff is and was during all the times hereinafter mentioned an oil pipe line company in the State of Oklahoma, engaged in the transportation of crude oil by pipe line within the said State of Oklahoma, and not elsewhere, and that during all of said time it was a subsidiary

corporation of Cosden & Company, a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, with its principal place of business at Tulsa, Oklahoma, and that during all of said time said Cosden & Company operated an oil refinery at Tulsa, Oklahoma, but that said plaintiff and said Cosden & Company are, and have at all times been separate and distinct corporations, and are and have at all times been operated separately and independently of and from each other. That during all the times hereinafter mentioned plaintiff maintained and
23 operated a system of oil pipe lines in the State of Oklahoma connected with the refinery of Cosden & Company at Tulsa, Oklahoma, and during all of said time gathered and transported oil from various oil fields in the State of Oklahoma to Tulsa, Oklahoma. That the major portion of the business, operations and activities of the plaintiff during all of said times was the purchase of oil in the State of Oklahoma as agent for the aforesaid Cosden & Company, and the transportation of said oil as a pipe line carrier for the said Cosden & Company to its aforesaid refinery at Tulsa, Oklahoma, but that during all of said time said plaintiff transported various and sundry oil for parties other than Cosden & Company. That all of the business, operations and activities of said plaintiff, in the carriage of oil for the aforesaid Cosden & Company, and for all other parties for whom it at any time carried oil was what is known as an oil gathering transportation, or an oil gathering service, as distinguished from a main or trunk line transportation or main or trunk line service, and that said plaintiff at no time owned, operated or maintained what is known as a main or trunk pipe line for the transportation of oil, and that all of the oil carried or transported by plaintiff was a gathering transportation, properly to be paid for by what is known as gathering charges, and not by a combination of main or trunk line charges and gathering charges.

5: That said plaintiff has not at any of the times since its organization, and particularly during the period from November 1, 1917, to December 31, 1921, inclusive, been a public or common carrier, or transporter of oil for hire in its system of pipe lines, or any part thereof, nor has said plaintiff during said times been a public utility furnishing services or facilities for hire with respect to the transporta-

tion of oil in its said system of pipe lines, or any part thereof, and that while said plaintiff has made and collected charges for the carriage or transportation of the oil carried by it during the times herein involved from Cosden & Company, and all other parties for whom it carried or transported oil, such charges were made and collected by virtue of a contract or contracts between the plaintiff and the party or parties for whom such oil was carried or transported, and that said plaintiff has never filed, promulgated or published any tariff, or tariffs, for carriage of oil by pipe line,
24 nor has it ever been required by public authority, either State or Federal, to file, promulgate or publish any such tariffs, and that during the time or times involved herein, and at all other times, no rates or tariffs were, or ever have been legally fixed by public authority, either State or Federal, for the carriage or transportation of the oil carried by said plaintiff.

6: That from November 1, 1917, to December 31, 1921, said plaintiff, pursuant to the terms, conditions and provisions of the aforesaid Revenue Act of 1917, and of the aforesaid Revenue Act of 1918, made monthly returns under oath, in duplicate, and in the form and manner prescribed by the aforesaid Revenue Acts, and by the regulations promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, on account of the movement of oil by said plaintiff through its aforesaid system of pipe lines, during the period from November 1, 1917, to December 31, 1921; and paid to the defendant and the Commissioner of Internal Revenue the amount of taxes shown in said monthly returns to have been collected by said plaintiff in connection with the carriage or transportation of such oil, to-wit: the total sum of $255,329.30; or a total of $29,200.66 for the period from November 1, 1917, to March 31, 1919, and a total of $226,128.64 for the period from April 1, 1919 to December 31, 1921.

7: That said plaintiff further states and alleges that notwithstanding the matters hereinbefore stated and alleged the Commissioner of Internal Revenue illegally, unlawfully and without warrant or authority of law, levied and assessed against said plaintiff, in addition to the tax or taxes mentioned and described in the preceding paragraph of this peti-

tion, a tax or taxes in the total sum of $235,977.26, in connection with, or on account of the carriage or transportation of oil through its system of pipe lines, from November 1, 1917 to December 31, 1921, inclusive, or an additional tax or taxes of $60,863.71 for the period from November 1, 1917 to March 31, 1919; and an additional tax or taxes of $175,103.52 for the period from April 1, 1919 to December 31, 1921, as and for a tax or taxes alleged to be due from said plaintiff under and by virtue of subdivision (d) of Section 500, and Sections 501 and 503 of the Revenue Act of 1917, and subdivision (e) of Section 500, subdivision (d) of Section 501, and Section 502 of the Revenue Act of 1918, and that the defendant, Acel C. Alexander, as Collector of Internal Revenue for the United States for the District of Oklahoma, on June 28, 1924, demanded payment by said plaintiff of said additional tax or taxes in the sum of $235,977.26, under penalty that if the same was not paid within ten days from said date said defendant, as such Collector, would issue a warrant of distraint against the property of said plaintiff for the collection of said additional tax or taxes in the sum of $235,977.26, and that said plaintiff, in order to protect its rights and to prevent the imposition of severe penalties under the aforesaid Revenue Acts and the distraint of its property in the collection of said unlawful tax or taxes, was forced and compelled to comply with the aforesaid wrongful, unlawful and illegal demands of said defendant, as such Collector aforesaid, and did, on July 10, 1924, pay to said defendant, as such Collector, the said sum of $235,977.26, and that said additional tax or taxes in the sum of $235,977.26 was collected illegally, unlawfully and without warrant or authority of law, and that at the time of the commencement of this action no part thereof had been returned to said plaintiff.

8: That thereafter, on October 3, 1924, said plaintiff duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, its claim for refund for the aforesaid sum of $235,977.26, so erroneously and illegally assessed and collected; that said claim for refund was duly made on the form and in accordance with the rules and regulations adopted by said Commissioner of Internal Revenue and ap-

proved by the Secretary of the Treasury, and that in and by said claim for refund said plaintiff asked for the refund of said tax or taxes upon the ground that the same were wrongfully, unlawfully and illegally assessed and collected, and said claims for refund was duly subscribed and sworn to by the proper officer for said plaintiff in the manner provided by law; and that at the time of the commencement of this action said claim for refund was still pending before the aforesaid Commissioner of Internal Revenue.

9: That subsequent to the commencement of this action, and on or about the 21st day of June, 1926, the aforesaid Commissioner of Internal Revenue disallowed plaintiff's above mentioned and described claim for refund, but that thereafter, and on or about the 5th day of December, 1929, said Commissioner voluntarily re-opened and allowed said
26 claim for refund to the amount of $16,931.34, together with interest thereon in the sum of $5,233.63, and thereupon disallowed the balance of said claim for refund.

10: That there was and is included in the above mentioned and described additional assessment of $60,863.71, for the period from November 1, 1917 to March 31, 1919, the sum of $15,066.87, which was obtained in the following manner, to-wit: between November 1, 1917 and March 31, 1919, the plaintiff transported for Cosden & Company 2,022,248.41 barrels of oil, and made and collected therefor a charge of 5¢ per barrel, and voluntarily paid the Government a tax of 5 per centum of the amount so charged and collected, but in making the aforesaid additional assessment the Commissioner of Internal Revenue raised the charge made against and collected from Cosden & Company by the plaintiff for the aforesaid 2,022,248.41 barrels of oil from 5¢ per barrel to 20¢ per barrel, said 20¢ per barrel being made up of a gathering charge of 12½¢ per barrel and a main or trunk line charge of 7½¢ per barrel, and thus arrived at and made said additional assessment of $15,066.87; and that no part of said additional assessment of $15,066.87 has been refunded to said plaintiff.

11: That there was and is included in the above mentioned and described additional assessment of $60,863.71, for the period from November 1, 1917 to March 31, 1919, the sum of $36,666.50, which was obtained in the following man-

ner, to-wit: Between November 1, 1917 and March 31, 1919, the plaintiff transported for Cosden & Company 3,666,048.39 barrels of oil, but neither made nor collected any charge therefor, but in making the aforesaid additional assessment the Commissioner of Internal Revenue computed a tax of 5 per centum on a rate of 20¢ per barrel, said 20¢ per barrel being made up of a gathering charge of 12½¢ per barrel and a main or trunk line charge of 7½¢ per barrel, on the aforesaid 3,666,048.39 barrels of oil, and thus arrived at and made said additional assessment of $36,666.50; and that no part of said additional assessment of $36,666.50 has been refunded to said plaintiff.

12: That there was and is included in the above mentioned and described additional assessment of $60,863.71, for the period from November 1, 1917 to March 31, 1919, the sum of $995.90, which was obtained in the following manner, to-wit: On November 12, 1917, Cosden & Company, under a written contract sold to the Pierce Oil Corporation approximately 100,000 barrels of oil, which oil was located
27 in a tank or tanks near Cushing, Oklahoma, and which had been gathered into said tank or tanks by the plaintiff for Cosden & Company from a lease or leases near Cushing, Oklahoma, and pursuant to the aforesaid written contract the Pierce Oil Corporation laid and connected its own lines to the aforesaid tank or tanks and transported the aforesaid approximately 100,000 barrels of oil away. That plaintiff never made or collected any charge whatsoever in connection with said oil, but in making the aforesaid additional assessment the Commissioner of Internal Revenue computed a tax of 5 per centum on a charge of 20¢ per barrel, said 20¢ per barrel being made up of a gathering charge of 12½¢ per barrel and a main or trunk line charge of 7½¢ per barrel, for the transportation of said approximately 100,000 barrels of oil, and thus arrived at and made said additional assessment of $995.90, and that no part of said additional assessment of $995.90 has been refunded to said plaintiff.

13: That there was and is included in the above mentioned and described additional assessment of $175,103.52, for the period from April 1, 1919 to March 31, 1921, the sum of $170,946.04, which was obtained in the following manner, to-wit: Between April 1, 1919 and March 31, 1921, the plaintiff transported for Cosden & Company 20,644,020.34 barrels

of oil, and made and collected therefor a charge of 10¢ per barrel, and voluntarily paid the Government a tax of 8 per centum of the amount so charged and collected, but in making the aforesaid additional assessment the Commissioner of Internal Revenue raised the charge made against and collected from Cosden & Company by the plaintiff for the aforesaid 20,644,020.34 barrels of oil from 10¢ per barrel to 20¢ per barrel, said 20¢ per barrel being made up of a gathering charge of 12½¢ per barrel, and a main or trunk line charge of 7½¢ per barrel, and thus arrived at and made said additional assessment of $170,946.04, and that no part of said additional assessment of $170,946.04, save and except the sum of $5,793.76, which was refunded to the plaintiff after the commencement of this suit, has been refunded to said plaintiff.

14: That all of the oil which was carried or transported by the plaintiff for Cosden & Company, between November 1, 1917 and December 31, 1921, and particularly the oil involved in the additional assessment of $15,066.87, referred to in paragraph 10 of this petition, and the oil involved in the additional assessment of $36,666.50, referred to in
28 paragraph 11 of this petition, and the oil involved in the additional assessment of $170,064.04, referred to in paragraph 13 of this petition, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof and insofar as the plaintiff acted in connection with the purchase of said oil, it did so solely as the agent of Cosden & Company, and that it never at any time owned said oil, or any part thereof.

15: That as to the oil involved in the additional assessment of $15,066.87, referred to in paragraph 10 of this petition, the plaintiff charged, collected and received from Cosden & Company 5¢ per barrel for the carriage or transportation of said oil, and that said charge was a correct and proper charge, and that the Commissioner of Internal Revenue, in assessing and collecting a transportation tax under and by virtue of the provisions of the Revenue Act of 1917, was limited to the aforesaid charge of 5¢ per barrel, and was precluded from assessing and collecting a tax in connection with said oil upon any basis other than said 5¢ per barrel, and that, therefore, said additional assessment of $15,066.87, and each and every part thereof, was erroneous, wrongful,

unlawful and illegal. And said plaintiff further states and alleges that even if it had not made, charged, collected and received from Cosden & Company anything for the carriage or transportation of the aforesaid oil, the basis upon which the aforesaid additional assessment of $15,066.87 was made, to-wit: a charge of 20¢ per barrel, being made up of a gathering charge of 12½¢ per barrel and a main or trunk line charge of 7½¢ per barrel, would have been erroneous, wrongful, unlawful and illegal for the following reasons, to-wit: (a) In making said additional assessment the Commissioner of Internal Revenue could have ascertained and determined from actual bona fide rates and charges which the plaintiff had made and collected from Cosden & Company and/or other parties for the carriage or transportation of oil what charge the plaintiff would have made for the carriage or transportation of the oil involved in the aforesaid additional assessment of $15,066.87, if it had received payment therefor, but in making such additional assessment said Commissioner of Internal Revenue wholly and erroneously, wrongfully, unlawfully and illegally determined the basis for said additional assessment, to-wit: a charge of 20¢ per barrel, from the rates or tariffs of other pipe line com-
29 panies and wholly disregarded, failed, neglected and refused to consider the aforesaid actual and bona fide rates and charges of the plaintiff, and that if said Commissioner of Internal Revenue had made said additional assessment upon the basis of the aforesaid actual and bona fide rates and charges of said plaintiff, the basis of said additional assessment would have been 5¢ per barrel instead of 20¢ per barrel, the basis upon which said additional assessment was in truth and in fact made; and (b) That there were no rates or tariffs of any pipe line company other than the plaintiff sufficient to furnish a basis for imposing any transportation tax against the plaintiff for the carriage or transportation by it of oil by pipe at any time between November 1, 1917 and December 31, 1921.

16: That as to the oil involved in the additional assessment of $170,946.04, referred to in paragraph 13 of this petition, the plaintiff charged, collected and received from Cosden & Company 10¢ per barrel for the carriage or transportation of said oil, and that said charge was a correct and proper charge, and that the Commissioner of Internal Rev-

enue, in assessing and collecting a transportation tax under and by virtue of the provisions of the Revenue Act of 1918, was limited to the aforesaid charge of 10¢ per barrel, and was precluded from assessing and collecting a tax in connection with said oil upon any basis other than said 10¢ per barrel, and that, therefore, said additional assessment of $170,946.04, and each and every part thereof was erroneous, wrongful, unlawful and illegal. And said plaintiff further states and alleges that even if it had not made, charged, collected and received from Cosden & Company anything for the carriage or transportation of the aforesaid oil, the basis upon which the aforesaid additional assessment of $170,946.04 was made, to-wit: a charge of 20¢ per barrel, being made up of a gathering charge of 12½¢ per barrel and a main trunk line charge of 7½¢ per barrel, would have been erroneous, wrongful, unlawful and illegal for the following reasons, to-wit: (a) In making said additional assessment the Commissioner of Internal Revenue could have ascertained and determined from actual bona fide rates and charges which the plaintiff had made and collected from Cosden & Company and/or other parties for the carriage or transportation of oil what charge the plaintiff would have made for the carriage or transportation of the oil involved in the aforesaid additional assessment of $170,946.04, if it had received payment therefor, but in making such additional assessment said Commissioner of Internal Revenue wholly and erroneously, wrongfully, unlawfully and illegally determined the basis for said additional assessment, to-wit: a charge of 20¢ per barrel, from the rates or tariffs of other pipe line companies, and wholly disregarded, failed, neglected and refused to consider the aforesaid actual and bona fide rates and charges of the plaintiff, and that if said Commissioner of Internal Revenue had made said additional assessment upon the basis of the aforesaid actual and bona fide rates and charges of said plaintiff, the basis of said additional assessment would have been 10¢ per barrel instead of 20¢ per barrel, the basis upon which said additional assessment was in truth and in fact made; and (b) That there were no rates or tariffs of any pipe line company other than the plaintiff sufficient to furnish a basis for imposing any transportation tax against the plaintiff for the carriage or transportation by it of oil by pipe line at any time between November 1, 1917 and December 31, 1921.

17: That as to the oil involved in the additional assessment of $36,666.50, referred to in paragraph 11 of this petition, said plaintiff states and alleges that the basis upon which said additional assessment was made, to-wit: a charge of 20¢ per barrel, being made up of a gathering charge of 12½¢ per barrel and a main or trunk line charge of 7½¢ per barrel, was and is erroneous, wrongful, unlawful and illegal for the following reasons, to-wit: (a) in making said additional assessment the Commissioner of Internal Revenue could have ascertained and determined from actual bona fide rates and charges which the plaintiff had made and collected from Cosden & Company and/or other parties for the carriage or transportation of oil, what charge the plaintiff would have made for the carriage or transportation of the oil involved in the aforesaid additional assessment of $36,666.50, if it had received payment therefor, but in making such additional assessment said Commissioner of Internal Revenue wholly and erroneously, wrongfully, unlawfully and illegally determined the basis for said additional assessment, to-wit: a charge of 20¢ per barrel, from the rates or tariffs of some other pipe line company or companies, and wholly disregarded and failed, neglected and refused to consider the aforesaid actual and bona fide rates and charges of the plaintiff, and that if said Commissioner of Internal Revenue had made said additional assessment upon the basis of the aforesaid actual and bona fide rates and charges of said plaintiff, the basis of said additional assessment would have been 5¢ per bar-
31 rel, but in no event a higher basis than 10¢ per barrel, instead of 20¢ per barrel, the basis upon which such additional assessment was in truth and in fact made; and (b) that there were no rates or tariffs of any pipe line company or companies other than the plaintiff; sufficient to furnish a basis for imposing any transportation tax against the plaintiff for the carriage or transportation by it of oil by pipe line at any time between November 1, 1917 and December 31, 1921.

18: That as to the oil involved in the aforesaid additional assessment of $995.90, referred to in paragraph 12 of this petition, said plaintiff states and alleges that the basis upon which said additional assessment was made, to-wit: a charge of 20¢ per barrel, being made up of a gathering charge of 12½¢ per barrel and a main or trunk line charge of 7½¢

per barrel, was and is erroneous, wrongful, unlawful and illegal for the following reasons, to-wit: (a) that said plaintiff never at any time transported or carried the aforesaid oil, within the meaning of the Revenue Acts of 1917 or 1918, said oil having been carried and transported by the Pierce Oil Corporation; (b) in making said additional assessment the Commissioner of Internal Revenue could have ascertained and determined from actual bona fide rates and charges which the plaintiff had made and collected from Cosden & Company and/or other parties, for the carriage or transportation of oil, what charge the plaintiff would have made for the carriage or transportation of the oil involved in the aforesaid additional assessment of $995.90, if it had carried or transported said oil, and if it had received payment therefor, but in making such additional assessment said Commissioner of Internal Revenue wholly and erroneously, wrongfully, unlawfully and illegally determined the basis for said additional assessment, to-wit: a charge of 20¢ per barrel, from the rates or tariffs of some other pipe line company or companies, and wholly disregarded and failed, neglected and refused to consider the aforesaid actual and bona fide rates and charges of the plaintiff, and that if said Commissioner of Internal Revenue had made said additional assessment upon the basis of the aforesaid actual and bona fide rates and charges of said plaintiff, the basis of said additional assessment would have been 5¢ per barrel, but in no event a higher basis than 10¢ per barrel, instead of 20¢ per barrel, the basis upon which such additional assessment was in truth and in fact made; and (c) that there were no rates or tariffs of any pipe line company or companies other than the plaintiff, sufficient
32 to furnish a basis for imposing any transportation tax against the plaintiff for the carriage or transportation by if of oil by pipe line at any time between November 1, 1917 and December 31, 1921.

19: That as to all of the oil that was carried or transported by the plaintiff from November 1, 1917 to December 31, 1921, the only service, if any, which was rendered by the plaintiff, was a gathering service, as contra-distinguished from a main or trunk line service, and that no part of such service was a main or trunk line service, and that if the Commissioner of Internal Revenue, in determining for the purpose of taxation the charge or charges which the plaintiff would

or should have made for the carriage or transportation of the oil referred to in paragraphs 10, 11, 12 and 13 of this petition, or any of said paragraphs, had any right, power or authority to use or consider the rates or tariffs of any pipe line company or companies, other than the plaintiff, he had no right, power or authority to use or consider said rates or tariffs, save and except insofar as the same applied to gathering charges, and that the usual and customary gathering charge of pipe line companies operating in the vicinity of the plaintiff's pipe lines, and during the period from November 1, 1917 to December 31, 1921, was from 12¢ to 12½¢ per barrel.

20: That the action of the Commissioner of Internal Revenue in making each and all of the additional assessments mentioned, described and referred to in paragraphs 10, 11, 12 and 13 of this petition, and each of them, was and is wholly arbitrary, null and void, and that said additional assessments, and each of them, were made upon a basis or bases wholly erroneous, wrongful, improper, unlawful and illegal, and without any proper evidence or hearing.

21: That those parts of the Revenue Acts of 1917 and 1918, which provide for the assessment and collection of a so-called tax or liability, when a carrier of oil by pipe line has made no charge for such carriage or transportation, or has made an insufficient charge therefor, are in contravention of Article 3, Section 1 of the Constitution of the United States, vesting judicial power in the courts, and are, therefore, unconstitutional, null and void.

22: That those parts of the Revenue Acts of 1917
33 and 1918 which provide for the assessment and collection of a so-called tax or liability, when a carrier of oil by pipe line has made no charge for such carriage or transportation, or has made an insufficient charge therefor, are null and void for indefiniteness and uncertainty.

23: That by reason of the premises the defendant is indebted to the plaintiff in the sum of Two Hundred Seventeen Thousand, Eight Hundred Eighty One and 15/100 Dollars ($217,881.15), being the total of the unlawful, wrongful, erroneous and illegal exaction and collection of the additional assessments mentioned, described and referred to in para-

graphs 10, 11, 12 and 13 of this petition, with interest thereon at the rate of six per cent (6%) per annum from July 10, 1924.

Wherefore, said plaintiff prays for judgment of this Honorable Court against the defendant for the sum of Two Hundred Seventeen Thousand, Eight Hundred Eighty One and 15/100 Dollars ($217,881.15), with interest thereon at the rate of six per cent (6%) per annum from the 10th day of July, 1924, and for the costs of this action, and for such other and further relief as is just, equitable and proper.

J. C. DENTON,
R. H. WILLS,
J. H. CROCKER,
I. L. LOCKEWITZ,
J. P. GREVE,
Attorneys for Plaintiff.

State of Oklahoma, County of Tulsa—ss.

J. C. Denton, of lawful age, being first duly sworn,
34 deposeth and saith:

That he is Vice-President of Cosden Pipe Line Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Oklahoma; that said corporation is the plaintiff named in the above and foregoing petition; that he has read said petition and that the matters, things and allegations therein set forth, stated and contained are true and correct, as he verily believes.

J. C. DENTON.

Subscribed and sworn to before me this 25th day of November, 1930. (Seal) Edna R. Glenn, Notary Public. My Commission Expires: Nov. 10, 1933.

Endorsed: Filed in District Court on December 17, 1930.

Findings of Fact.

(1) The Court finds each and all of the stipulated
35 and agreed facts set out, stated and contained in the agreed statement of facts, which was entered into by the above named plaintiff, and the above named defendant by and through their respective attorneys of record and which said agreed statement of facts was filed herein prior to the commencement of the trial of said cause, and which

said agreed statement of facts was introduced in evidence by the plaintiff upon the trial of said cause.

(2) The Court finds that the additional assessment of $60,865.71 made against the plaintiff for the carriage of oil by plaintiff from November 1, 1917 to March 31, 1919, included $995.90 for 99,590.31 barrels of oil, which the Commissioner of Internal Revenue, in making said additional assessment, determined that the plaintiff carried for the Pierce Oil Corporation and made no charge therefor, and said additional assessment of $995.90 was obtained by computing the tax on a rate of 20¢ per barrel on said 99,590.31 barrels of oil; that said oil was collected in a tank on a tank farm of plaintiff's near Cushing, Oklahoma, and was carried by plaintiff to said tank from the lease or leases from which the same was produced, and which said lease or leases were located in the vicinity of Cushing, Oklahoma; that said oil was sold to the Pierce Oil Corporation by Cosden & Company on or about the 12th day of November, 1917, under a written contract, and the same was delivered to the said Pierce Oil Corporation in the aforesaid tank; and that thereafter the Pierce Oil Corporation connected its lines to the aforesaid tank and carried said oil away.

(3) That as to the oil involved in the additional assessments for the period from November 1, 1917 to March 31, 1919, and for the period from April 1, 1919 to December 31, 1921, other than the oil covered by the agreed statement of facts and the Pierce Oil Corporation oil referred to in the preceding paragraph, the plaintiff introduced no evi-
36 dence save and except to the effect that the amount or amounts thereof were comparatively small.

(4) The Court finds that from November 1, 1917 to December 31, 1921, the principal business of the plaintiff has been carrying oil for Cosden & Company; that during said period of time the plaintiff has never held itself out as a common carrier; and that the State of Oklahoma has never required the plaintiff to file or publish any rates or tariffs covering the carriage of oil.

(5) The Court finds that from November 1, 1917 to December 31, 1921, the plaintiff filed with the Commissioner of Internal Revenue monthly returns as to the carriage of

oil by it and paid the amount of taxes shown by said returns to be due and payable.

(6) The Court finds that all oil carried by the plaintiff for Cosden and Company from November 1, 1917 to March 31, 1919, was owned by Cosden and Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as the plaintiff acted in connection with the purchase of said oil it did so as the agent of Cosden & Company, and that it never at any time owned said oil.

(7) The Court finds that all oil carried by the plaintiff for Cosden and Company from April 1, 1919 to December 31, 1921, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as the plaintiff acted in connection with the purchase of said oil it did so as the agent of Cosden & Company, and that it never at any time owned said oil.

(8) The Court finds that from a date several months prior to November 1, 1917 to July 1, 1918, the plaintiff charged, collected and received from Cosden & Company five cents per barrel for all oil carried by it for the said Cosden & Company, during said period of time.

(9) The Court finds that the plaintiff neither made nor collected nor received anything from Cosden & Company for any oil carried by it, for the said Cosden & Company between July 1, 1918 and March 31, 1919.

37 (10) The Court finds that from April 1, 1919 to the present time the plaintiff has charged, collected and received from Cosden and Company ten cents per barrel for all oil carried by it for the said Cosden & Company, during said period of time.

(11) The Court finds that, except for the year 1920, plaintiff's revenues from the carriage of all oil carried by it, except where no charge or charges were made, were sufficient to take care of its operating expenses in connection with the carriage of such oil, or, in other words, the actual cost and expense of carrying said oil.

(12) The Court finds that, except for the year 1920, the charges which the plaintiff made, collected and received from

Cosden and Company for the carriage of all oil carried by it for the said Cosden and Company, except where no charge or charges were made, were sufficient to take care of the operating expenses in connection with the carriage of such oil, or, in other words, the actual cost and expense of carrying said oil.

(13) The Court finds that the average of all charges made by the plaintiff for the carriage of all oil carried by it from November 1, 1917 to March 31, 1919, for all outside or non-affiliated parties, was 13 cents per barrel, and that this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(14) The Court finds that the average of all charges made by the plaintiff for the carriage of all oil carried by it from April 1, 1919 to December 31, 1921, for all outside or non-affiliated parties was 16.4 cents per barrel, and this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(15) The Court finds that the average of all charges made by the plaintiff for the carriage of all oil carried by it from November 1, 1917 to March 31, 1919, for all outside or non-affiliated parties, and for the 645,120.64 barrels of oil
38 owned by Cosden & Company and carried by plaintiff for it during said period, and which said oil is referred to in paragraph 7 of the above referred to agreed statement of facts, was 11.74 cents per barrel, and that this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(16) The Court finds that the average of all charges made by the plaintiff for the carriage of all oil from November 1, 1917 to March 31, 1919, for all parties whether affiliated or non-affiliated or not, and including the 645,120.64 barrels of oil owned by Cosden & Company and carried by plaintiff for it during said period, which is referred to in paragraph 7 of the above referred to agreed statement of facts, was 9.5 cents per barrel, and this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(17) The Court finds that the average of all charges made by the plaintiff for all oil carried by it from April 1, 1919 to December 31, 1921, for all parties, whether affiliated or non-affiliated or not, was 11.17 cents per barrel, and this charge is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying same.

(18) The Court finds that from November 1, 1917 to March 31, 1919, the plaintiff carried for outside or non-affiliated parties a total of 3,702,347.93 barrels of oil, and during the same period of time carried for Cosden & Company, a total of 6,333,417.44 barrels of oil, which latter figure represents 63 per cent of the total amount of oil carried by plaintiff for all parties during said period of time.

(19) The Court finds that from April 1, 1919 to December 31, 1921, the plaintiff carried for outside or non-affiliated parties a total of 4,735,469.81 barrels of oil, and during the same period of time carried for Cosden & Company 21,006,-142.41 barrels of oil, which latter figure represents 39 .81% of the total amount of oil carried by plaintiff for all parties during said period of time.

(20) The Court finds that the actual costs and expenses of carrying oil by the plaintiff during the time involved in this case is as follows, to-wit:

For 1918, 7.8 cents per barrel,

For 1919, 7.6 cents per barrel,

For 1929, 10.7 cents per barrel,

For 1921, 8.8 cents per barrel.

(21) The Court finds that the approximate distance the plaintiff carried the 645,120.64 barrels of oil owned by Cosden and Company, and which is referred to in paragraph 7 of the above referred to agreed statement of facts, was forty-four miles.

(22) The Court finds that if the plaintiff had charged 20 cents per barrel instead of the amounts actually charged by it for the carriage of all oil carried by it, for both affiliated and non-affiliated parties, from November 1, 1917 to December 31, 1921, its operating profits would have been as follows, to-wit:

For 1918—28 per cent,

For 1919—36 per cent,

For 1920—17 per cent,

For 1921—20 per cent,

and by "operating profits" is meant the gross amount received for the carriage of oil, less the actual cost and expense of carrying said oil.

(23) The Court finds that if the plaintiff had charged 20 cents per barrel instead of the amounts actually charged by it for the carriage of all oil carried by it, for both affiliated and non-affiliated parties, from November 1, 1917 to December 31, 1921, its net profits would have been as follows, to-wit:

For 1918—23.6 per cent,

For 1919—30.5 per cent,

For 1920—12.2 per cent,

For 1921—A net loss of $50,000.00,

and by "net profits" is meant the gross amount received for the carriage of oil, less the actual cost and expense of carrying said oil, and all other costs and expenses.

(24) The Court finds that the basis of the charges which were made by the plaintiff for the carriage of oil for Cosden & Company from November 1, 1917 to December 31, 1921, was to make the charge sufficient to take care of the actual cost and expense of carrying the oil.

(25) The Court finds that the usual and customary "gathering charge" of common carrier pipe lines, operating in the vicinity of the plaintiff's pipe lines, and during the period from November 1, 1917 to December 31, 1921, was from 12 cents to 12½ cents per barrel.

(26) The Court finds that the plaintiff, in the operation of its system of pipe lines, received oil anywhere along its lines that it was able to obtain oil, and regardless of pump stations, or anything else.

(27) The Court finds that customarily common carrier pipe lines only receive oil in their trunk lines at tariff points and where they have pump stations.

(28) The Court finds that plaintiff's system of pipe lines constitutes a gathering system and nothing more, and said system is only comparable to the "gathering system" or "gathering lines" of common carrier pipe lines, and the service or services rendered by the plaintiff, as compared with the service or services rendered by common carrier pipe lines, is nothing more than a gathering service.

(29) The Court finds that on or about the 5th day of August, 1922, the Commissioner of Internal Revenue made the additional assessment or assessments involved herein; that on July 8, 1924, the plaintiff paid to the defendant the amount of said additional assessment or assessments, to-wit: $235,-967.26; that on October 6, 1924, the plaintiff filed with the Commissioner of Internal Revenue its application for the refund of the amount of the aforesaid assessment or assessments; that on June 21, 1926, the aforesaid application for refund was denied; and on or about the 5th day of September, 1929, the Commissioner of Internal Revenue made the refunds referred to in paragraphs 7 and 8 of the above referred to agreed statement of facts herein.

(30) The Court finds this action was instituted June 5th, 1926.

Conclusions of Law.

Pursuant to the findings of fact hereinbefore set
41 out, the Court concludes as to matters of law as follows:

(1) That since the capital stock of the plaintiff company was at all times owned by Cosden & Company, and since the plaintiff company was organized for the purpose of purchasing and transporting by pipe line the oil of said Cosden and Company, and since the organization, operation and maintenance of said plaintiff company, was merely for the convenience and accommodation of said Cosden & Company, the said plaintiff company had no occasion and was not bound in law to charge a higher rate for the transportation of the oil of Cosden & Company than was actually necessary to meet the expenses of the operation of said plaintiff company.

(2) The Court concludes as a matter of law that the Commissioner of Internal Revenue has no power to establish pipe line rates for the transportation of oil as between the plaintiff company and Cosden & Company except such

power as is granted in the 1917 Revenue Act, Section 501, and the 1918 Revenue Act. Section 501 (d), and under said revenue Acts where a rate has been established between plaintiff and Cosden & Company which is reasonable under all the circumstances, the same rate should be applied as between the same parties for the purpose of taxation where for any reason no rate has been charged.

(3) That with reference to the 2,022,248.41 barrels of oil that was transported by the plaintiff for Cosden and Company, between November 1, 1917 and March 31, 1919, and in connection with which the Commissioner of Internal Revenue made an additional assessment of $15,066.87 against the plaintiff, and which said additional assessment was obtained by raising the charge made against and collected from Cosden & Company by the plaintiff for said 2,022,248.41 barrels of oil from five cents per barrel to 20 cents per barrel, that the aforesaid additional assessment of $15,066.87, and each and every part thereof was erroneous and illegal, and that the plaintiff is entitled to judgment for the re-
42 turn of said sum of $15,066.87, together with interest thereon from the time of payment.

(4) That with reference to the 20,644,020.34 barrels of oil that was transported by the plaintiff for Cosden & Company between April 1, 1919 and March 31, 1921, and in connection with which the Commissioner of Internal Revenue made an additional assessment of $170,946.04 against the plaintiff, and which said additional assessment was obtained by raising the charge made against and collected from Cosden & Company by the plaintiff for said 20,644,020.34 barrels of oil from ten cents per barrel to 20 cents per barrel, that the aforesaid additional assessment of $170,946.04, and each and every part thereof was erroneous and illegal, and that the plaintiff is entitled to judgment for the return of said sum of $170,946.04, less the sum of $5,793.76 thereof, which was refunded to the plaintiff subsequent to the commencement of this action, together with interest thereon from the time of payment.

(5) That with reference to the 3,666,048.39 barrels of oil that were transported by the plaintiff for Cosden & Company between July 1, 1918 and March 31, 1919, and for which the plaintiff neither made nor collected any charge therefor, and

in connection with which the Commissioner of Internal Revenue assessed against and collected from the plaintiff the sum of $36,666.50, which was obtained by computing a tax of five per centum on a rate of 20 cents per barrel on the aforesaid 3,666,048.39 barrels of oil, that the basis of said additional assessment, to-wit, the sum of 20 cents per barrel was erroneous and illegal, and that the Commissioner of Internal Revenue instead of making said assessment on the basis of 20 cents per barrel should have made the same on the following basis, to-wit: the basis of ten cents per barrel. The Court concludes that the charge of ten cents per barrel is proper for the reason that the time covered by the transportation of said oil for which no charge was made covered time before and after the ten cent rate went into
43 effect and there is no evidence which enables the Court to determine what quantity was transported during the time the respective rates were in effect.

(6) That with reference to the 99,950.51 barrels of oil which were located in a tank or tanks near Cushing, Oklahoma, and which had been gathered into said tank or tanks by the plaintiff from a lease or leases near Cushing, Oklahoma, and which on or about the 12th day of November, 1917, was sold by Cosden & Company, under written contract to the Pierce Oil Corporation, and pursuant to which said written contract the said Pierce Oil Corporation laid or connected its line or lines to the aforesaid tank or tanks and transported the aforesaid barrels of oil away, and in connection with which the plaintiff never made or collected any charge whatsoever, but that the Commissioner of Internal Revenue assessed and collected from the plaintiff $995.90, which said assessment was obtained by levying a tax of five per centum on a rate of 20 cents per barrel for the transportation of said 99,950.31 barrels of oil, that the plaintiff never at any time transported or carried the said oil within the meaning of the Revenue Act of 1917 or 1918, except from the various leases from which the plaintiff purchases oil for said Cosden & Company to plaintiff's tank farm, and since the oil so transported was the property of Cosden & Company, and the rate of five cents per barrel was the rate then in effect as between plaintiff and Cosden & Company, the rate of five cents was the rate upon which the tax should have been based, and therefore, plaintiff is entitled

to judgment based upon five per centum of five cents per barrel or $746.93 together with interest from date of payment.

(7) That all of the oil that was carried by plaintiff for Cosden & Company from November 1, 1917 to December 31, 1921, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as plaintiff acted in connection with the purchase of said oil that it did so as the agent
44 of Cosden & Company, and that it never, at any time, owned said oil, and that where the plaintiff made and collected a charge for carrying such oil or should have made a charge therefor, such charge or charges is the sole and exclusive basis for the collection of a transportation tax, either under the 1917 or the 1918 revenue law.

(8) That there were no rates or tariffs of any pipe line company other than the plaintiff sufficient to furnish a basis for imposing any transportation tax for the carriage of oil by pipe line, either under the 1917 or the 1918 revenue law, against the plaintiff.

(9) That if the Commissioner of Internal Revenue, in determining, for the purpose of taxation the charge which the plaintiff would or should have made for the transportation of oil which it carrier for Cosden & Company, or for any other company, without making any charge therefor, it had received payment therefor, had any right, power or authority to use or consider the rates or tariffs of other pipe line companies, he had no right, power or authority to use or consider said rates or tariffs save and except insofar as the same applied to gathering charges.

(10) That judgment should therefore be entered as herein before stated, on the first claim, of $15,066.87 together with interest thereon from the time of payment. On the second claim, $165,152.28, together with interest thereon from the time of payment, and on the third claim the sum of $18,333.25, together with interest thereon at the time of payment, and on the fourth claim, $746.92, together with interest thereon from the time of payment. Dated July 3, 1931. Exception allowed the defendant.

EDGAR S. VAUGHT, District Judge.

Endorsed: Filed in District Court on July 3, 1931.

Journal Entry of Judgment.

45 Heretofore, to-wit, on the 30th day of April, 1930, the above entitled cause came regularly on for trial before the Court, without a jury, the parties having heretofore filed herein a written waiver of a jury trial; the above named plaintiff appearing by its attorneys, J. C. Denton and R. H. Wills, and the above named defendant appearing by his attorneys, Roy St. Lewis, United States Attorney for the Western District of Oklahoma, and Charles T. Hendler, Special Attorney for the Bureau of Internal Revenue; and at the conclusion of the trial of said cause the same was taken under advisement by the Court. And,

Now, on this 3rd day of July, 1931, the above named plaintiff appearing by its attorney, R. H. Wills, and the above named defendant appearing by his attorney, Roy St. Lewis, and the said parties having in open Court agreed that the trial of said cause might be reopened for the introduction of additional evidence, whereupon the trial of said cause was re-opened and additional evidence was introduced, and both sides having closed, and the Court having heard and considered the arguments of counsel and being fully advised in the premises, files herein its written Findings of Fact and Conclusions of Law. And,

Now, on the said 3rd day of July, 1931, and pursuant to the aforesaid Findings of Fact and Conclusions of Law, it is Ordered, Adjudged and Decreed by the Court that the above named plaintiff, Cosden Pipe Line Company, a corporation, have and recover judgment against the above named defendant, Acel C. Alexander, Collector of Internal Revenue for the District of Oklahoma, in the total sum of One Hundred Ninety-nine Thousand Two Hundred Ninety-nine & 32/100 Dollars ($199,299.32), together with interest thereon at the rate of 6% per annum for the 8th day of July, 1924, and for the costs of said action, for all of which let execution issue.

To the above and foregoing judgment, and each and every part thereof, the defendant excepts, and his exceptions are allowed.

Done in open Court this 3rd day of July, 1931.

46 EDGAR S. VAUGHT,
United States District Judge.

OK. R. H. Wills, Attorney for Pltf.
OK. as to form. Roy St. Lewis, Attorney for Defendant.

Endorsed: Filed in District Court on July 3, 1931.

Notice of Appeal.

Plaintiff in the above entitled cause is hereby notified that the defendant herein appeals from the decision of the Court as entered on the 3d day of July, 1931; said appeal will be to the United States Circuit Court of Appeals for the Tenth Circuit in accordance with the citation as issued in this case on the 23 day of September, 1931.

United States Attorney,

WILLIAM EARL WILES,
Assistant United States Attorney,

Attorneys for Defendant.

Service of the above notice of appeal accepted this 24th day of September, 1931.

J. C. DENTON,
R. H. WILLS,
Attorneys for Plaintiff.

Endorsed: Filed in District Court on Sept. 25, 1931.

[Omitted: Orders of Oct. 16, 1931; Nov. 20, 1931; Dec. 29, 1931; Feb. 10, 1932, and Feb. 29, 1932, each extending time within which to docket appeal.]

Order.

It is this day ordered, for good cause shown, that
8 the time in which the said appellant may docket said cause and file a transcript of the record herein, in the

United States Circuit Court of Appeals, be and the same is hereby extended to April 10, 1932.

March 21, 1932.

EDGAR S. VAUGHT,
United States District Judge.

3399 Law.

Endorsed: Filed March 21, 1932. Theodore M. Filson, Clerk, By Grace G. Butler, Deputy.

Order.

It is this day ordered, for good cause shown, that
47 the time in which the defendant may file its bill of exceptions herein be and the same is hereby extended to December 31, 1931.

Dated November 20, 1931.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court on Nov. 20, 1931.

Order.

It is this day ordered, for good cause shown, that
48 the time in which the defendant may file its bill of exceptions herein be and the same is hereby extended to February 10, 1932.

Dated December 29, 1931.

EDGAR S. VAUGHT,
United States District Judge.

LD

Endorsed: Filed Dec. 29, 1931, Theodore M. Filson, Clerk, By Glenn H. Grubb, Deputy.

Order.

It is this day ordered, for good cause shown, that
49 the time in which the defendant may file its bill of ex-

ceptions herein be and the same is hereby extended to March 1, 1932.

Dated February 10, 1932.

EDGAR S. VAUGHT,
United States District Judge.

LD

Endorsed: Filed Feb. 10, 1932. Theodore M. Filson, Clerk, By Grace G. Butler, Deputy.

Order.

It is this day ordered, for good cause shown, that
50 the time in which the defendant may file its bill of exceptions herein be and the same is hereby extended to March 11, 1932.

February 29, 1932.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court on Feb. 29, 1932.

BILL OF EXCEPTIONS,

Now on this 4th day of April, 1930, the above
51 entitled and numbered cause comes on for trial at Guthrie, Oklahoma, pursuant to assignment, before Honorable Edgar S. Vaught, United States District Judge.

Appearances: For Plaintiff—Mr. R. H. Wills, Mr. J. C. Denton; For Defendant—Mr. Roy St. Lewis, United States Attorney; Mr. Charles T. Hendler, Special Attorney for Bureau of Internal Revenue.

And all parties announcing ready for trial, a trial by jury being waived in writing and filed herein, the following proceedings were had and done in said cause, to-wit:

By Mr. Wills: The plaintiff agrees to dismiss the first cause of its petition with the understanding that such allegations thereafter of said first cause of action as are embodied and made a part of the second cause of action shall be included and made a part of the second cause of action.

Thereupon the agreed statement of facts filed herein was offered and received in evidence, the same being in words and figures as follows:

Agreed Statement of Facts.

It is stipulated and agreed by and between the parties
52 to the above entitled cause, by their respective attorneys, that on the trial of said cause the following facts shall be taken as being true:

1: The plaintiff, Cosden Pipe Line Company, is now and has been since September, 1914, a corporation duly organized and existing under the laws of the State of Oklahoma, with its principal place of business in the City of Tulsa, in said State.

2: A. C. Alexander was from July 1, 1921 to June 30, 1922, and is now and has been since March 1, 1923, the Collector of Internal Revenue for the District of Oklahoma, and he is now and was at all times while he was Collector, as aforesaid, a resident of Oklahoma City, Oklahoma.

3: From and after its incorporation in 1914, and up to the present time, the plaintiff has continuously maintained and operated oil pipe lines in the State of Oklahoma, but not elsewhere.

4: During all the time from September, 1914, until after January 1, 1922, Cosden & Company was a corporation duly organized and existing under the laws of Oklahoma, with its principal place of business at Tulsa, Oklahoma, and during all of said time was operating an oil refinery at Tulsa, Oklahoma.

5: From and after its organization in September, 1914, continuously until after January 1, 1922, all of the stock of plaintiff was owned by Cosden & Company.

6: Plaintiff has never filed or promulgated tariffs
53 for the carriage of oil by pipe line and has never maintained tariff stations.

7: From November 1, 1917 to March 31, 1919, plaintiff collected $580,301.10 for oil carried by it and collected taxes for the government in the sum of $29,200.66. The Commissioner of Internal Revenue assessed and collected from plain-

tiff for oil so carried by it between November 1, 1917 and March 31, 1919, a tax in the sum of $90,064.37, being the sum of $60,863.71 in excess of the amount of tax collected by plaintiff. The additional sum so assessed and collected included the sum of $4,838.40 obtained by raising the charge made against Cosden & Company for 645,120.64 barrels of oil owned by Cosden & Company and carried by plaintiff for it from 5¢ per barrel, which was the charge made against and collected from Cosden & Company, to 20¢ per barrel, and this amount of $4,838.40 has been refunded to the plaintiff. The additional sum so assessed and collected also included $15,066.87 obtained by raising the charge made against Cosden & Company for 2,022,248.41 barrels of oil transported and delivered by plaintiff to Cosden & Company from 5¢ per barrel, which was the charge made by plaintiff to Cosden & Company, to 20¢ per barrel. The additional sum so assessed and collected also included $2,125.69 obtained by raising the charge made against Inland Refining Company for oil carried by plaintiff and owned by the Inland Refining Company, from 7¢ per barrel, which was the charge made and collected from Inland Refining Company, to 12½¢ per barrel, and this amount of $2,125.69 has been refunded to the plaintiff. The additional sum so assessed and collected also included the sum of $36,660.50 obtained by computing the tax on a rate of 20¢ per barrel on 3,666,048.39 barrels of oil transported by plaintiff and delivered to Cosden & Company at Tulsa, Oklahoma, without making a charge for such transportation.

In addition to the refunds above mentioned there was refunded to the plaintiff the sum of $590.80 of the additional taxes assessed against and paid by the plaintiff on account of oil transported for the Atlantic Petroleum Corporation, the Duluth Oil and Gas Company, Great American Re-
54 fining Company, and other companies during the period from November 1, 1917, to March 31, 1919.

8: From April 1, 1919 to December 31, 1921, plaintiff collected $2,821,450.09 for oil transported by it and collected tax for the government in the sum of $226,128.64. The Commissioner of Internal Revenue assessed and collected from plaintiff for oil so transported by it between April 1, 1919 and December 31, 1921, a tax in the sum of $401,232.16, being the sum of $175,103.52 in excess of the amount of tax

collected by plaintiff. The additional sum so assessed and collected included the sum of $170,946.04 obtained by raising the charge made against Cosden & Company for 20,644,020.34 barrels of oil transported by plaintiff and delivered to Cosden & Company at Tulsa from 10¢ per barrel, which was the charge made to Cosden & Company, to 20¢ per barrel, and of this amount the sum of $5,793.76 has been refunded to plaintiff. The additional sum so assessed and collected also included the sum of $1,695.96 obtained by raising the charge made by plaintiff to Inland Refining Company for 401,680.93 barrels of oil owned by Inland Refining Company and carried for it by plaintiff from 7¢ per barrel, which was the charge made and collected from Inland Refining Company, to 12½¢ per barrel, and this amount of $1,695.96 has been refunded to plaintiff. The additional sum so assessed and collected also included $71.30 obtained by raising the charge made and collected against Inland Refining Company for certain other oil owned by Inland Refining Company and transported by plaintiff from 12¢ per barrel, which was the charge made and collected by plaintiff, to 12½¢ per barrel, and this amount of $71.30 has been refunded to plaintiff. The additional sum so assessed and collected also included $887.01 obtained by raising the charge made and collected by plaintiff from Pierce Oil Company for 110,877.17 barrels of oil sold by Cosden & Company and transported and delivered by plaintiff to Pierce Oil Company from 10¢ per barrel, which was the charge made and collected, to 20¢ per barrel, and this amount of $887.01 has been refunded to plaintiff. The additional sum so assessed and collected
55 also included $175.72 obtained by raising the charge made and collected from Pierce Oil Company for 43,930.95 barrels of oil carried for it by plaintiff from 15¢ per barrel, which was the charge made and collected, to 20¢ per barrel, and this amount of $175.72 has been refunded to plaintiff. The additional sum so assessed and collected also included $206.51 obtained by raising the charge made and collected from Pierce Oil Company for 103,257.56 barrels of oil carried for it by plaintiff, from 17½¢ per barrel, which was the charge made and collected, to 20¢ per barrel, and this sum of $206.51 has been refunded to plaintiff. The additional sum so assessed and collected also included $62.21 obtained by raising the charge made and collected from Pierce

Oil Company for 155,546.47 barrels of oil carried for it by plaintiff from 22¢ per barrel, which was the charge made and collected, to 22½¢ per barrel, and this sum of $62.21 has been refunded to plaintiff. The additional sum so assessed and collected also included $1.47 obtained by raising the charge for oil carried by plaintiff for the Four Gasoline Company from 12¢ per barrel to 12½¢ per barrel, and this sum of $1.47 has been refunded to plaintiff. In addition to refunds mentioned above there was refunded to plaintiff the sum of $636.41 of the additional taxes assessed against and paid by plaintiff on account of oil transported for the Great American Refining Company and other companies during the period from April 1, 1919 to December 31, 1921.

9: In the operation of the plaintiff's business, where oil was purchased from any producers in the fields where it operated, such oil was purchased in the tanks of the producer. The oil so purchased was moved by the plaintiff from the tanks located on the property of the producer from whom the oil was purchased, through lateral pipe lines of the plaintiff, to storage tanks of the plaintiff on its tank farms or to its pipe lines to destination. The lateral pipe lines through which said oil was taken from producer's tanks were owned by plaintiff and were laid and attached by the plaintiff to such producer's tanks.

10: In some cases the oil was gathered from the
56 field into large tanks composing so-called tank farms owned by plaintiff and was from such tanks pumped through the pipe lines of plaintiff to its destination. In moving the oil transported from the field by the plaintiff to its destination such oil sometimes, but not always, passed through one, two, three, and sometimes four different pumping stations before reaching its destination.

11: Common-carrier pipe lines, in the transportation of oil by pipe line, have what is commonly known as a trunk or main pipe line. This trunk or main pipe line is divided into tariff stations at intervals, at each of which is located a pumping station, and the rate charged for the transportation of oil is computed from such tariff stations to destination. In addition to the trunk or main pipe line, common-carrier pipe lines have lateral pipe lines that are called "gathering lines". Any pipe line reaching from any point where oil is

purchased or produced to the trunk or main line or to storage tanks at or near the main or trunk line or to tank farms is called a gathering line, without regard to its size, the distance, or the amount of oil carried through such line to the trunk or main pipe line, or to the trunk or main pipe line storage tanks, or to a tank farm.

12: Common-carrier pipe lines, in the transportation of oil through their pipe lines, make a charge, separate from and in addition to the trunk or main line tariff covering movement of the oil through their main pipe lines of what is universally known and defined as a "gathering charge".

13: The gathering charge is a sum paid for the service rendered in moving oil from the point where it is tendered to or received by the carrier, whether it be the working tank at the well or the storage tanks in the field, to the trunk or main line tariff stations, or to a tank farm of the carrier, or to main-line storage tanks. And the rate charged for such gathering service is a flat rate, being the same by the same carrier in the same field, whether the distance traversed by the gathering line be twenty-five yards or twenty-five miles.

14: Where a pipe line company maintains both a
57 trunk or main line and gathering lines it is the universal practice not to accept oil into the main or trunk line at any place other than at the various tariff stations or where pumping stations are located. The plaintiff picked up and took oil into its lines at all points along its pipe lines where oil could be obtained.

15: The pipe lines of plaintiff run out from the City of Tulsa in three different directions. The greatest distance oil was transported through plaintiff's pipe lines into the City of Tulsa at any time from November 1, 1917, to January 1, 1922, was sixty-seven miles, and the average distance was forty-three miles.

16: The plaintiff duly filed with the Commissioner of Internal Revenue a claim for the refund of all additional taxes assessed against and paid by it on the transportation of oil by pipe line between November 1, 1917 and January 1, 1922, and said claim was rejected and denied, but since this suit was filed said claim for refund was reopened and allowed as set forth in paragraphs nine and ten hereof.

17: Either party hereto shall have the right to offer any competent evidence he or it may desire or any relevant matter not in conflict with this stipulation.

J. C. DENTON,
R. H. WILLS,
Attorney for Plaintiff.

ROY ST. LEWIS,
Attorney for Defendant.

Thereupon, counsel for the plaintiff and the defendant offered and introduced the following evidence, testimony and exhibits upon the trial of the case, to-wit:

Plaintiff's Evidence.

Mr. Thompson, W. E., being first duly sworn upon his oath to testify to the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

Direct Examination by Mr. Wills.

Q. State your name?

58 A. W. E. Thompson.

Q. What is your occupation?

A. Accountant for the Cosden Pipe Line Company.

Q. How long have you been such accountant?

A. Twelve years.

Q. You have charge of the Cosden books and records of the Cosden Pipe Line Company?

A. Yes, sir.

Q. Mr. Thompson, are you familiar with the additional assessment involved in this case?

A. Yes, sir.

Q. Was the carriage of oil for Pierce Oil Corporation included in the additional assessment?

A. Yes, sir.

Q. Explain to the Court how this additional assessment was made.

A. The oil sold by the Cosden & Company to the Pierce Oil Corporation was purchased from the Jeannette Richards Farm, and was then delivered to the Pierce Oil Corporation for which we set up no charges. The Commissioner set up a charge of 20¢ tax on that.

Q. Where was this oil located?

A. On the Jeanette Richards Farm, tank farm.

Q. In what locality?

A. Near Cushing.

Q. What was the amount of that additional assessment?

A. Nine Hundred and Ninety-Five Thousand Dollars and some cents.

Q. That oil was carried under the 1917 Revenue Law?

A. Yes, sir.

Q. Where did that oil come from?

A. The Jeanette Richards Tank Farm near Cushing.

Q. You say Cosden & Company sold oil to the Pierce Oil Corporation?

A. Yes, sir.

Q. Was that under contract?

A. Yes, sir.

Q. Do you have that contract with you?

A. Yes, sir.

Q. Produce it please?

59 A. This is the contract.

Q. Referring to the instrument identified as plaintiff's Exhibit 1, I ask you if that is the contract that you refer to?

A. It is.

By Mr. Wills: I offer in evidence plaintiff's Exhibit 1.

By the Court: Admitted.

Plaintiff's Exhibit 1.

Agreement.

This Agreement, made and entered into on this 12th day of November, 1917, by and between Cosden & Company, a Corporation, of Tulsa, Oklahoma, hereinafter referred to as the seller, and Pierce Oil Corporation, a corporation, of St. Louis, Missouri, and Tulsa, Oklahoma, hereinafter referred to as the buyer, witnesseth that:

For and in consideration of the sum of One Dollar each to the other in hand paid, receipt of which is hereby acknowledged, and other good and valuable considerations hereinafter set out, it is mutually agreed as follows:

1. The seller agrees to sell, and the buyer agrees to purchase from the seller, one hundred thousand (100,000) barrels of Cushing crude oil, which the buyer agrees to take at the rate of approximately 2000 barrels per day, deliveries to start immediately upon the execution of this instrument.

2. It is understood and agreed that the oil purchased and sold under this agreement is to be fresh produced Cushing crude oil, of 38 gravity or better, and is to be delivered to the buyer from the tanks numbered 1007 and 1008, which tanks are located on what is known as the Jeanette Richards farm, described as NE¼ of Section 4, Township 17 North, Range 7 East, in Creek County, Oklahoma.

3. Gauges shall be taken by the representatives of the parties hereto and each run-ticket gauge shall be signed by the representatives of both parties. Said gauges are to be considered final and settlements made in accordance therewith. The buyer shall have the privilege of maintaining the suction line at such height in the tatnk as will protect it against the removal of any B. S. or water.

4. It is understood and agreed that the oil purchased is to be delivered on gross gauges, with actual deductions allowed for B. S. and water shown of proper test.

5. The price to be paid for the oil sold under this agreement shall be Two and 75/100 ($2.75) Dollars per barrel of 42 gallons, and payments for said oil shall be made in cash on the tenth of each month for all oil delivered from and including the sixteenth to and including the last day of the

previous month, and on the twenty-fifth of each month for all oil delivered from and including the first to and including the fifteenth day of the current month, payments to be made from the buyer's office in St. Louis, Missouri, on the above mentioned dates.

6. It is mutually agreed that the buyer shall have at all times the right of ingress and egress to the property described on which said tanks are located, for the purpose of removing said oil, and for the purpose of doing any and all things necessary in the carrying out of this agreement.

7. It is understood and agreed between the parties hereto that the oil in the tanks mentioned above, or either of them, which has been guaged and from which the buyer has been authorized to take deliveries, shall be and remain the property of the seller until delivery has been completed, the final gauge taken and the tank re-delivered to the seller. In order that proper insurance records may be maintained by the seller it is agreed by the buyer that hourly gauges of said tank or tanks shall be taken by the seller while oil is being run therefrom, in order that the actual contents of said tanks may be determined for insurance purposes at any time.

8. This contract shall extend to and be binding upon successors and assigns of the parties hereto.

In witness whereof, the parties hereto have caused this instrument to be executed by their duly authorized officers on the day and year first above written.

COSDEN & COMPANY,
61 By E. R. Perry, Vice President.

PIERCE OIL CORPORATION,
By C. W. Cahoon, Vice President.

Attest: D. W. Moffitt, Asst. Secretary.
Attest: James H. Brook, Secretary.

Q. Mr. Thompson, how did the Pierce Petroleum Corporation get oil from those tanks?

A. They put a pipe line in there connecting with the tanks.

Q. The plaintiff, the Cosden Pipe Line Company, had nothing to do with carrying oil from those tanks?

A. Nothing but the gauging of it.

Q. Aside from the Pierce Oil Corporation, is there any other out side company involved in this additional assessment for which no refund has been made?

A. Four or five.

Q. The amounts involved in those transactions were comparatively small?

A. Yes, sir.

Q. The carrying of oil to the Cosden & Company has been the principal business of the Cosden Pipe Line Company since its organization?

A. Yes, sir.

Q. Has it ever been a common carrier?

A. No, sir.

Q. The plaintiff in this action, the Cosden Pipe Line Company, never did publish rates?

A. No, sir.

Q. The State ever require this plaintiff to publish rates or tariff?

A. No, sir, it has not.

Q. Mr. Thompson, I will ask you to explain to the Court just how the oil that was carried by the plaintiff for Cosden & Company was purchased.

A. The oil was purchased by the Cosden Pipe Line Company and payment was made twice a month, when the amount ascertained to be required was purchased, the Pipe Line Company paid for it by check, then Cosden & Com-
62 pany was notified of the amount and they deposited a check to cover this amount.

Q. Was the checks of the Cosden & Company issued before the checks of the Pipe Line Company were sent out.

A. Yes, sir.

Q. Was that money deposited in a separate account?

A. Yes, sir. And it was used for the purchase of crude oil.

Q. During that period of time how often did the Pipe Line Company pay for oil?

A. Twice a month.

Q. On what days?

A. I believe on the 25th and on the 10th of the month.

Q. Did the Pipe Line Company purchase any oil of any funds that it had?

By Mr. Hendler: Object to the question for the reason it is leading.

By the Court: Overruled. Exceptions allowed.

A. No, sir, it did not.

Q. During this period involved in this case Mr. Thompson, was the oil that was purchased in this manner you have described, sold before it reached the refinery?

A. Yes, sir.

Q. I will ask you, when oil was sold in this way, who sold it?

A. Cosden & Company.

Q. Just as in the Pierce Oil Corporation contract?

A. Yes, sir.

Q. Who collected for oil sold in that way?

A. Cosden & Company.

Q. Mr. Thompson, you understand the 1917 Revenue Law, that became effective in November, 1917?

A. Yes, sir.

Q. Immediately prior to that time, what charges were the plaintiff making for the carriage of oil?

A. Five cents per barrel.

Q. How long before that date, November 1, 1917, was that charge rate instituted?

A. Several months before that.

63 Q. How long did that rate continue after November 1, 1917?

A. Until July 1, 1918.

Q. What happened at that time?

A. No charge was made from July 1, 1918, to March 31, 1919, and the rate was then advanced to ten cents per barrel.

Q. Has it been effective ever since?

A. Yes, sir.

Q. Mr. Thompson, insofar as the plaintiff has made charges for the carriage of oil, either to Cosden & Company, or any out side company to which it happened to transport oil, has it made any distinction between a gathering charge and a main line charge?

A. No, sir.

Q. I understand that the charges have always been flat charges?

A. Flat rates.

Q. Do you happen to have the financial statement of the plaintiff for the years 1918, 19 and 20 and 21?

A. Yes, sir.

Q. Do those financial statements show the operating expenses for the years involved in this case?

A. Yes, sir.

Q. Does it also show the revenues from the carriage of oil?

A. Yes, sir.

Q. Mr. Thompson, did the plaintiff have any income from any source other than the carriage of oil?

By Mr. Hendler: I object to the question, it is leading?

By the Court: Overruled, exceptions allowed.

A. No, sir.

Q. Now, referring to 1918, were the revenues of the plaintiff from the carriage of oil, sufficient to take care of the operating expenses in that year?

A. When they made a charge for transportation of oil it was.

Q. What do you say about the year 1918?

A. The revenues were sufficient to take care of the operating expenses.

Q. 1920?

64 A. Was not. The revenues were not quite large enough.

Q. 1921?

A. The revenues were able to take care of the operating expenses in 1921.

Q. I understand that with the exception of one year the revenues the plaintiff derived from the carriage of oil were sufficient to take care of the operating expenses?

A. Yes, sir.

Q. With reference to the charges that the plaintiff made against the Cosden & Company for carriage of oil, were those charges actually paid by the Cosden & Company?

A. No, sir, when the money was advanced to pay for the oil the charges were included in the oil delivered to them.

Q. In that manner the charges were paid?

A. Yes, sir.

Q. Mr. Thompson, have you made a computation of the average charges of the plaintiff for carriage of oil for outside companies during the period of the 1917 Revenue Law and also during the period of the 1918 Revenue Law?

A. Average, yes, sir.

By Mr. Hendler: We object to that. We don't know anything, or care anything about that, it is incompetent, irrelevant and immaterial.

By the Court: Overruled, exceptions allowed.

A. For the first period the average charge was thirteen cents and for the second period from April 1, 1919, to December 31, 1921, the average charge was sixteen and four tenths cents.

Q. Just explain to the Court how you got those averages.

A. Took the amount of revenue received from the transportation of oil to outside companies, and divided it by the number of barrels carried during that period and that gave me the average charge.

Q. You also made a computation of the average charges for carriages of all oil for these two periods, including all oil carried by the plaintiff for Cosden & Company?

A. Yes, sir. The first period was nine and one-half cents and the second period was eleven and seventeen hun-
65 dredths cents per barrel.

Q. You arrived at that in the same manner?

A. Yes, sir.

Q. I understand those last figures you gave include the carriage by the plaintiff, of all oil for outside companies and also for Cosden & Company?

A. Yes, sir.

By Mr. Hendler: I move to strike out that portion of the witnesse's testimony relative to what he understands, that is calling for a conclusion of the witness.

By the Court: Overruled, exceptions allowed.

Q. Mr. Thompson, have you made a computation of the average charges for all oil carried by the plaintiff for outside companies in addition to that oil carried for Cosden & Company that you just referred to, on which refund has been made?

A. I don't understand your question.

Q. You are familiar with the oil carried by the plaintiff for the Cosden & Company?

A. Yes, sir.

Q. Being oil purchased directly by Cosden & Company?

A. Yes, sir.

Q. Taking that amount of oil, and adding to it the oil carried for outside companies, what is the average charge?

A. Yes, I can get that.

Q. What is the average charge?

A. Eleven and seventy-four hundredths cents per barrel.

Q. That is all of the oil—

A. That is the oil carried for outside companies and the Cosden & Company.

Q. What period is that for?

A. November 1, 1917, to March 31, 1919.

Q. That is the period in which this oil was carried for the Cosden & Company, for which refund has been made?

A. Yes, sir.

Q. Can you give us figures as to the total number of barrels of oil carried by the plaintiff for outside companies to March 31, 1919?

66 A. 3,702,247.93 barrels of oil delivered to Cosden & Company between November 1, 1917, and March 31, 1919, was 6,333,417.44 or 63% of all oil delivered during that period, and delivered to Cosden & Company between April 1, 1919, and December 31, 1921, 21,006,132.49 barrels which was 81% of the total amount of oil delivered in that period.

Q. Mr. Thompson, with reference to the batch of oil previously described as being the oil carried for Cosden & Company carried on which refund has been made since the filing of this suit, can you tell us the amount involved in that carriage?

A. I believe it was six hundred forty thousand barrels.

Q. What was the carrying charge?

A. Five cents per barrel.

Q. The Commissioner included that in its—

A. Twenty cent rate.

Q. He levied an additional tax of the difference between the five cent charge and the twenty cent charge which he said should have been charged?

A. Yes, sir.

Q. What was the amount of that additional assessment?

A. $4,838.40.

Q. That has been refunded?

A. Yes, sir.

Q. What was the approximate distance that oil was carried?

A. About forty-four miles.

Q. Have you made a computation as to the amount per barrel it cost the Cosden Pipe Line Company to carry oil during the periods involved in this case?

A. I didn't myself. I had it done.

By Mr. Hendler: I object to the materiality of the question.

By the Court: Overruled, exceptions allowed.

A. In 1918 it cost seven and eight tenths cents per barrel.

Q. That I understand, was the cost per barrel to the refinery for the carriage of oil?

A. That was the rate for the transportation of
67 all oil moved in 1918.

Q. The actual cost for carrying oil and the cost to the Pipe Line Company?

A. Yes, sir. The cost for 1919 was seven and six-tenth cents per barrel, for 1920 it was ten and seven-tenth cents per barrel and 1921 it was eight and eight-tenth cents per barrel.

Q. Mr. Thompson, have you made a computation to determine what would have been the operating profits of the plaintiff, if it had charged and received twenty cents for the carriage of oil?

By Mr. Hendler: Object to the question, it is immaterial to us what their profits would have been.

By the Court: Overruled, exceptions allowed.

A. The operating profits for 1918 would have been twenty-eight percent on investment, 1919, 36%, 1920, 17% and for 1921, twenty percent on investment.

Q. What do you mean by operating profits.

A. What we received less what it cost to operate the Pipe Line Company.

Q. Have you also made a computation as to the net profits that would have been realized if the plaintiff had charged and received twenty cents for the carriage of oil?

A. Yes, sir.

By Mr. Hendler: I think he would explain what he means by net profits.

By the Court: Overruled, exceptions allowed.

A. The percent of net profits for 1918 would have been 23 and 6 tenth cents, for 1919 would have been thirty and one-half, for 1920 would have been twelve and two-tenth cents and for 1921 there would have been a net loss of Fifty Thousand Dollars.

Q. Explain to the Court what you mean by net profits?

A. Net profits mean the profits after you made all deductions for expenses of running the business. It is what would be left after deducting all expenses from the gross income.

Q. Mr. Thompson, you stated a moment ago that for a period of time beginning June, 1919, along about that time, no charges were made by the plaintiff for the carriage
68 of oil for Cosden & Company?

A. Yes, sir.

Q. Are there any files or records of the Pipe Line Company showing why no charges were made during that time?

A. Yes, sir.

Q. Produce them please. Q. What have you there?

A. The minutes of the Cosden Pipe Line Company.

Q. Turn to the minutes you refer to, what is the date of that?

A. 25th day of June, 1918.

Q. Mr. Thompson, I will ask you to read those.

By Mr. Hendler: I object to the plaintiff burdening the records with such stuff that is in no way material to the issues of this case.

By the Court: I don't see how it would be material.

By Mr. Wills: I withdraw the offer.

Q. Mr. Thompson was the plaintiff, the Cosden Pipe Line Company under substantially the same general management as that of the Cosden & Company?

A. Yes, sir.

Q. Operating the same offices?

A. Yes, sir.

Q. Did the Pipe Line Company have separate employees?

A. Some are, some are not.

Q. Did they keep separate and distinct records?

A. Yes, sir.

Q. Mr. Thompson, I hand you plaintiff's Exhibit 2 and ask you what that is?

A. This is a letter advising as to the additional assessment.

Q. From whom?

A. From the Treasury Department at Washington.

Q. Who is it signed by?

A. D. H. Blair, Commissioner.

Q. Was that letter received by the Cosden Pipe Line Company?

A. It was.

By Mr. Wills: I offer in evidence plaintiff's Exhibit 2.

By the Court: Let it be admitted.

69 Plaintiff's Exhibit 2.

Treasury Department.

Washington, August 2, 1922.

The Cosden Pipe Line Co., Tulsa, Oklahoma.

Received Aug. 5, 1922. Treasurer.

Gentlemen: This office is in receipt of a report from Deputy Collectors Acre and Evans relative to an investigation of

your company completed on May 19, 1922, from which additional tax of $235,967.23 was found due under section 500 (e), Revenue Act of 1918, covering the movement of oil by pipe line.

This report states that your company acts as a purchasing agent and transports all oil for Cosden & Company, the latter being the refining company. It appears that Cosden & Company has several subsidiary and affiliated companies in which may be included the Cosden Oil and Gas Co., Cosden Pipe Line Co., Inland Refining Co., No. 4 Gasoline Co., and the Southland Gasoline Co., the investigating officers report that all the oil handled by your company for the companies mentioned above was within a small radius of the plant or refineries of the said companies with the exception of a few shipments where your company set up a higher rate on account of greater distance. The report indicates that your company does not hold itself out as a common carrier and has no public tariff for the movement of oil by pipe line, although it has gathered and transported oil for various companies at various rates. It is reported, however, that the services performed by your company are similar in many respects to the services performed by common carrier pipe line companies operating in the same fields. The deputies, for purpose of tax computation, have fixed the following rates as applicable:

	Gathering	Transporting	Total
Cosden and Company	12½¢	7½¢	20¢
Inland Refining Company	12½¢	—	12½¢
Pierce Oil Corporation	12½¢	7½¢	20¢
No. 4 Gasoline Company	12½¢	—	12½¢
Southland Gasoline Company	12½¢	—	12½¢
Duluth Refining Company	12½¢	7½¢	20¢
Great American Refining Company	12½¢	7½¢	20¢
Atlantic Petroleum Corporation	12½¢	7½¢	20¢
Empire Oil Corporation		02¢	02¢

After careful review of the report submitted this office considers that the deputies have computed tax on a fair and just basis and the Collector at Oklahomo, Okla., is being instructed to get in touch with you upon return of his June, 1922, Sales Tax list with a view to

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arranging for payment of the $215,919.56 which has been assessed thereon covering the period from June, 1918, to December, 1921, inclusive.

There is also due under this computation tax of $20,047.70 for the period from November, 1917, to May, 1918, inclusive, and it will be necessary for you to sign a waiver permitting the assessment of this tax before further action is taken by the department. The Collector will get in touch with you as regards that point.

You are also advised that if you desire to test the correctness of the assessment made or to be made against you, it is your privilege to file claim for abatement on Form 843, a copy of which may be obtained from the Collector at Oklahoma City with full instructions as to the preparation of the same.

Respectfully,

D. H. BLAIR, Commissioner.

Q. Mr. Thompson, do you know on what date the additional assessment involved in this case was paid?

A. July 8, 1924.

Q. What was the total amount paid?

A. $235,967.26.

Q. Can you tell us on what date the plaintiff filed its application for refund, approximately?

A. October, 1924.

Q. Mr. Thompson, you have a copy of the refund filed for additional assessment involved in this case?

A. I have.

Q. Is this it?

A. Yes, sir.

Q. I ask that it be identified as plaintiff's Ex-
71 hibit 3.

By Mr. Wells: We offer in evidence plaintiff's Exhibit 3.

By the Court: Admitted.

Plaintiff's Exhibit 3.

Claim For

Abatement of tax assessed.
Credit against outstanding assessments
X Refund on taxes illegally collected
Refund on amounts paid for stamps
Used in error or excess.

State of Oklahoma, County of Tulsa—ss.

Notice to collector—Collector must indicate in block above the kind of claim, except in income tax cases.

Cosden Pipe Line Company (Name of taxpayer or purchaser of stamps).

Cosden Building, Tulsa, Oklahoma (Business address).

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

		Period	Yr
1.	Business in which engaged. Delivering Crude Oil to Cosden & Company Refinery	From Nov.	1 17
		To Dec.	31 21

2. Character of assessment of tax. Transportation Tax.
3. Amount of assessment or stamps purchased....$235,977.26.
4. Reduction of Tax Liability requested (income and Profits Tax).
5. Amount to be abated .....
6. Amount to be refunded or such greater amount as is legally refundable $235,977.26
7. Dates of payment (See Collector's receipts or indorsements of canceled checks) July 10 & 11, 1924.
(If statement covers income tax liability, items 8-11, inclusive must be answered.)
8. District in which return (if any) was filed.....
9. District in which unpaid assessment appears,.....
10. Amount of overpayment claimed as credit,.....
11. Unpaid assessment against which credit is asked; periods from ..... to .....

Deponent verily believes that this application should be allowed for the following reasons:

72 Cosden Pipe Line Company, an Oklahoma corporation, was organized primarily, and has existed solely for the purpose of gathering and delivering crude oil

to the refinery owned and operated by Cosden & Company, an Oklahoma corporation, at West Tulsa, Oklahoma.

Cosden & Company, a corporation, Cosden Pipe Line Company, a corporation, and Cosden Oil & Gas Company, a corporation, the latter of which is engaged in prospecting for and mining crude oil, are all under one unified control; and the two last named corporations were organized primarily and solely for the purpose of furnishing the Refinery of Cosden & Company at West Tulsa, Oklahoma with a sufficient supply of crude oil.

A very small percentage of the oil transported through the lines of the Cosden Pipe Line Company has not been used in the Refinery of Cosden & Company, and has been sold, for the reason following:

The maximum capacity of the Refinery of Cosden & Company is now approximately 40,000 barrels of crude oil per day, and the oil produced by the Cosden Oil & Gas Company is not now, and has never been sufficient to supply the needs of the refinery. Thus it has always been necessary to purchase a considerable quantity of crude oil elsewhere to insure the continuous operation of the refinery at its maximum capacity. In purchasing oil, contracts are made many months in advance, based upon the maximum capacity of the refinery, but because of repairs and other matters beyond control, the refinery is seldom operated continuously at its maximum capacity for any considerable period of time. This necessarily causes a surplus of crude oil to accumulate from time to time, and which surplus must be sold at times for lack of storage.

Again, contracts for the purchase of crude oil are generally made for a period of months, and require the purchaser to take all of the oil produced from a certain lease; hence, as new producing wells are brought in on the lease, which is a matter beyond the purchaser's control, the daily production of oil on the lease is increased, and the purchasing company is often required to take a larger quantity of oil than contemplated or needed. This, likewise, produces a surplus of oil over and above that needed by the refinery, which has to be sold at various times for lack of storage.

73 The Cosden Pipe Line Company has never been declared a common carrier as it does not operate outside of the State of Oklahoma. Its system is only a gathering line for the refinery of Cosden & Company. It has never published a tariff and has never been governed by any regula-

tions pertaining to common carriers. Under these conditions it is decidedly unfair to class it as a common carrier and apply common carrier tariff rates to it as was done by your investigation officer.

Sworn and subscribed before me this 3 day of Oct., 1922.

Signed C. P. L. CO.,

P. K. Dittmer. By C. Klein, Mgr.

Q. Mr. Thompson, I *had* you plaintiff's Exhibit 4 and ask you to state what that is?

A. This is a letter from the Treasury Department at Washington with attention to Mr. J. C. Denton, General Attorney. Signed by D. H. Blair, Commissioner of Internal Revenue, relating to the claim for refund.

By Mr. Wills: We offer in evidence plaintiff's Exhibit 4.

By the Court: Let it be admitted.

Plaintiff's Exhibit 4.

Treasury Department.

Washington, June 21, '26.

MT:M:YC CL. 336311.

Cosden Pipe Line Company, Cosden Building, Tulsa, Oklahoma.

Attention: J. C. Denton, Gen. Atty.

Gentlemen: Reference is made to your claim for refund of $235,977.26 (235,967.26 is correct as assessed) tax on transportation of oil by pipe line during periods of November, 1917, to May, 1918, and June, 1918, to December, 1921, inclusive.

You contend that your company, as Oklahoma corporation, was organized primarily and has existed solely for the purpose of gathering and delivering crude oil *and* refinery owned and operated by Cosden & Company, an Oklahoma corpora-
74 tion at West Tulsa, Oklahoma; that a small percentage of the oil transported thourgh your pipe line was not used in the refinery. A surplus of crude accumulated from time to time and was sold for lack of storage; and that your company has never been declared a "common" carrier and has never published a tariff.

Section 500 (d) Revenue Act of 1917 imposed a tax equivalent to 5 per centum of the amount paid for the transportation of oil by pipe line and section 500 (e) Revenue Act of 1918 imposed a tax equivalent to 8 per centum of the

amount paid for transportation of oil by pipe line. Section 501 (d) Revenue Act of 1918 provided that the tax imposed by subdivision (c) of section 500 shall apply to all transportation of oil by pipe line. In case no charge for transportation is made, by reason of ownership of the commodity tranaported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax cannot be computed from actual bona fide rates or tariffs, it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

The provisions of section 501 of the prior Act are substantially similar to the section of the 1918 Act referred to.

Section 92, Treasury Department Regulations 49 (revised) as amended by Treasury Decision 3197 approved July 18, 1921, provides that, where the person so transporting is not a carrier, there is a taxable transportation of oil by pipe line within the meaning of Section 501 (d) whenever the movement of said oil, effected by the owner thereof is substantially similar to those movements which pipe line carriers usually undertake and perform; or, in other words, where the movement is not merely local and incidental to another business engaged in by the person so transporting, such as the producing or refining of oil. Thus where a refiner maintains a main, trunk, or stem line from his refinery to an oil field or pool, the services he performs for himself are similar to those which pipe line carriers would otherwise render to him. He should, therefore, pay the tax as though he had in fact employed the service of a carrier.

75

Evidence shown that your company owned and operated pipe line systems in Osage, Creek, Okmulgee, Wagoner, Okfuskee, Rogers and Tulsa Counties in the State of Oklahoma, and that crude oil was gathered and transported from various wells in these counties to your refinery at West Tulsa, for distances ranging from about 12 miles to 48 miles. It is considered from the character of the movements and distances covered that they cannot be construed as local or intraplant movements, but were similar to movements performed by pipe line carriers operating in the same fields for

which charges were regularly made. It is accordingly held that the gathering and transportation services were subject to tax under the Revenue Acts of 1917 and 1918. Since no tariffs were published by your company, naming rates for the service performed, the Department has for the purpose of taxation set up under authority of section 501 of the Act referred to rates per barrel as follows:

	Gathering	Transportation	Total
Cosden and Company	12½¢	7½¢	20¢
Inland Refining Company	12½¢	—	12½¢
Pierce Oil Corporation	12½¢	7½¢	20¢
No. 4 Gasoline Company	12½¢	—	12½¢
Southland Gasoline Company	12½¢	—	12½¢
Duluth Refining Company	12½¢	7½¢	20¢
Great American Refining Co.	12½¢	7½¢	20¢
Atlantic Petroleum Corporation	12½¢	7½¢	20¢
Empire Oil Corporation		02¢	02¢

Tax computed on these rates for the period June, 1918, to December, 1921, inclusive, amounts to the sum of $215,919.56. Tax computed on the same rates for the period November, 1917, to May, 1918, inclusive, amounts to $20,047.70, or a total of $235,967.26 additional tax due. Claim is amended to this amount and is rejected under the Revenue Acts of 1917 and 1918.

Respectfully,

D. H. BLAIR, Commissioner.

LEH cc, Oklahoma City, Okla.

Q. Mr. Thompson, I hand you what has been identified as plaintiff's Exhibit 5 and ask you to state what that is?

A. Notice of adjustment of claim for refund.

Q. From whom?

A. Eugene McGovern, Acting Deputy Commissioner.

Q. That was received by the Cosden Pipe Line Company?

A. Yes, sir.

By Mr. Wills: We offer in evidence plaintiff's Exhibit 5.

By the Court: Admitted.

Plaintiff's Exhibit 5.

Washington, D. C., Dec. 5, 1929.

Notice of Adjustment of Claim for Refund,

MT-M-MH Claim No. S-3363311 District Oklahoma
Schedule No. MTR-402

Cosden Pipe Line Company, Cosden Building, Tulsa, Oklahoma.

(Collector of Internal Revenue, Received Jan. 9, 1930, District of Oklahoma.)

Your claim for refund of transportation tax erroneously or illegally collected, has been adjusted as shown below:

Claimed $..... Allowed $..... Rejected $.....

Total paid $235,967.26. Date of payment Claim presented October 6, 1925—July 11, 1924.

Previously claimed	$235,967.26
Previously rejected	$235,967.26
Reopened and allowed	16,931.34

See attached explanation.

Included in the inclosed check is interest in the amount of $5,233.63.

A check by the Disbursing Clerk of the Department for the amount refunded is forwarded herewith.

Respectfully,

SER EUGENE McGOVERN,
MT-M-MH Acting Deputy Commissioner.

Cosden Pipe Line Company.

In accordance with report of Revenue Agent John F. Rogers, dated May 9, 1928, your claim for $235,967.26, which was rejected on June 21, 1926, is reopened to the extent of $16,931.34 and allowed. Allowance is due to the following corrections made as the result of the report of Revenue Agent Rogers.

77 Your claim is allowed for $4,838.40, tax paid under the 1917 Act of 645,120.64 barrels of oil owned by Cosden & Co., and transported for it by you for a charge of 5 cents per barrel whereas this additional tax of $4,838.40 was computed on a rate of 20 cents per barrel. It is held that under the 1917 Act on this oil owned by Cosden & Co., the tax should attach on the basis of the actual charge made, that is, the $1,612.80 tax originally paid by you on this movement is correct and the additional tax of $4,838.40 assessed and collected is excessive and therefore allowed.

The report of Revenue Agent Rogers indicated that for the period from July 1, 1918, to March 31, 1919, you transported 3,676,048.39 barrels of your oil and delivered it to Cosden & Co., for which service no charge was made and no tax was originally paid. The rate of 20 cents per barrel previously fixed by the Bureau as proper for purposes of tax computation is approved and additional tax of $100.00 appears to be due since Revenue Agent Rogers' report of May 9, 1928, indicates that 10,000 more barrels than were originally reported were involved in this movement.

It appears that you originally paid tax of $2,669.51 on 762,688.94 barrels of oil belonging to and transported for the Inland Refining Co. at a rate of 7 cents per barrel. Additional tax of $2,125.69 was collected from you on this movement on the theory that the tax should be computed on a 12½¢ cent per barrel gathering charge. Investigation now discloses that this oil belonged to the Inland Refining Co. and the $2,669.51 originally paid on actual charges for the gathering service is considered correct. The additional tax of $2,125.69 is therefore excessive and allowed.

Revenue Agent Rogers reports that during the period November 1, 1917, to March 31, 1919, your company delivered to the Southland Gasoline Co. 47,192.83 barrels of oil instead of 40,570.61 as originally reported. It therefore appears that on this movement, covering which you made no original return of tax, there should have been collected as tax based on a 12½ cent per barrel gathering charge the sum of $294.96 instead of $253.57 as previously computed.

78 Revenue Agent Rogers reports that under the 1917 Act you delivered to the Four Gasoline Co. 23,715.83 barrels of oil instead of the 21,714.32 barrels previously reported. Applying a 12½ cent per barrel gathering rate the tax on this movement amounts to $148.22 instead of $135.71.

MT-M-MH

Cosden Pipe Line Company.

The claim is allowed for 87 cents due to a reduction from 20 cents per barrel to 12½ cents per barrel in the rate applicable to the movement of 233.14 barrels of oil for the Atlantic Petroleum Corporation.

It further appears that in the first computation of additional tax due from your company you were charged with tax of $45.41 on 4,540.75 barrels of oil alleged to have been

delivered to the Duluth Oil & Gas Co. in November, 1917. Since it now appears that the billing for this oil was erroneous and the oil never delivered, you have overpaid $45.41 and your claim is allowed for this amount.

It also appears that you have overpaid tax of $453.70 on 45,369.63 barrels of oil originally reported as having been delivered to the Great American Refining Co. in January, 1918, which subsequent investigation discloses were not sold or delivered to that company. Your claim is allowed for this $453.70.

Your claim is also allowed for $22.55 representing tax paid in excess by reason of being computed on a 20 cent transportation rate instead of on a gathering rate of 12½ cents per barrel applying to 6,010.49 barrels of oil delivered in Quay Field in February and March, 1919, to the Great American Refining Co.

The report of Revenue Agent Rogers indicates that under the 1917 Act your company delivered to various other companies 2,667,944.80 barrels of oil instead of 2,684,531.92 barrels of oil originally reported. While no change has been made in rates, this results in an overpayment of $68.27 and your claim is allowed for that amount.

Summarizing, the report of Revenue Agent Rogers indicates that the total tax paid by you under the 1917 Act was $90,064.37; that the correct tax which should have been paid is $82,663.38, or a net overpayment of $7,400.99. Your claim is allowed for such overpayment as explained
79 in previous paragraphs.

The following paragraphs related to taxes overpaid under the Revenue Act of 1918.

Revenue Agent Rogers' report indicates that under the 1918 Act you delivered 20,644,020.34 barrels of oil to Cosden & Co. instead of the 21,006,132.49 originally reported, or a difference of 362,112.15 barrels. Although it is considered that the tax on this movement is properly due on a rate of 20 cents per barrel, as the result of the correction in barrels moved there is an overpayment of $5,793.76 tax and your claim is allowed for that amount.

MT-M-MH

Cosden Pipe Line Company.

Revenue Agent Rogers' Report also indicates that your company moved for the Inland Refining Company 414,447.33 barrels of oil belonging to it at a flat contract price of 7 cents

per barrel. Due to differences in rates and number of barrels reported by the deputies who made the first computation, there has been an overpayment of $1,695.96 on this movement and your claim is allowed for that amount.

Your claim is also allowed for $71.30 representing the excess tax collected by reason of computing tax on a 12½ cent per barrel basis instead of on a 12 cent per barrel basis as applied to 177,750.90 barrels of oil owned by the Inland Refining Company and transported by you for a flat contract price of 12 cents per barrel. It appears that tax in this instance should properly be computed at a rate of 12 cents per barrel and your claim is accordingly allowed for $71.30. You have in correspondence with the Bureau indicated that $163.60 had been overpaid by you on movements of oil for the Inland Refining Co. Your contention can be allowed only for the $71.30 applying to the 177,750.90 barrels due to the fact that the balance of the oil involved in your contention which was moved for the Inland Refining Co. did not belong to it but was your property while in course of transportation and the regular gathering charge of 12½¢ per barrel has therefore been used for purposes of tax computation.

The 887.01 additional tax collected on the movement of 110,877.17 barrels of oil for the Pierce Oil Co. is conceded to be erroneous and your claim is allowed for $887.01.

The $175.72 tax collected on 43,930.95 barrels of oil
80 moved for the Pierce Oil Co. is conceded to be excessive, the proper tax having been paid by you on the contract price of 15 cents per barrel and your claim is accordingly allowed for $175.72.

The $206.51 additional tax paid on 103,257.56 barrels of oil owned by and moved for the Pierce Oil Co. at a flat rate of 17½ cents per barrel is conceded to be erroneously paid in view of the fact that you have previously accounted for tax on the 17½ cent per barrel charge. Your claim is accordingly allowed for $206.51.

The additional tax of $62.21 collected from you on 155,546.47 barrels of oil moved for the Pierce Oil Co. also appears erroneous as you had previously paid tax on the 22 cent per barrel charge actually paid by the company and there is no basis for increasing the charge in this instance to 22½ cents per barrel.

The report of Revenue Agent Rogers indicates that the additional tax of $1.47 computed on a 12½ cent per barrel

basis, covering oil gathered and delivered in the field to the Four Gasoline Co., is excessive since the 3,641.76 barrels involved were delivered by you at a flat gathering rate of 12 cents per barrel and tax of $34.95 has been correctly paid thereon. Your claim is accordingly allowed for $1.47.

Your claim is also allowed for $20.38 representing additional tax computed on a 20 cent per barrel basis covering 3,396.45 barrels of oil gathered and delivered in the field to the Great American Refining Co. Since only a gathering service was performed in connection with this movement, the tax due using a 12½ cent per barrel rate is $33.96 and the $20.38 is excess of this amount is therefore allowed.

The reinvestigation also discloses an overpayment of $616.03 on oil delivered to "other companies" as the result of the determination that the amount delivered for such companies aggregates only 3,373,517.54 barrels instead of the 3,411,943.43 originally reported.

Summarizing the total tax paid by you under the 1918 Act amounts to $401,232.16 whereas it appears the total tax due is $391,701.81, indicating an overpayment of $9,530.35.

Since you overpaid the tax due under the 1917 Act
81 by $7,400.99 and the tax due under the 1918 Act by $9,530.35, or a total of $16,931.34, your claim has been reopened for $16,931.34 and allowed in that amount.

Q. Mr. Thompson, are you familiar with the form of published tariffs of the common carrier pipe lines?

A. I have seen some of them, yes, sir.

Q. I hand you plaintiff's Exhibit 6 and ask you to state what that is?

A. Empire Pipe Line, the rates published for the Interstate Transportation of crude petroleum by the carrier's trunk pipe lines, subject to the regulations of the company in effect at the time of shipment and lawfully on file with the Interstate Commerce Commission, there follows a list of names of the stations with the rate charged per barrel, effective August 9, 1920.

Q. That is form commonly used?

A. I believe it is, yes, sir.

By Mr. Wills: We offer in evidence plaintiff's Exhibit 6.

By the Court: Admitted.

Plaintiff's Exhibit 6.

No supplement to this Tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 6 Cancelling L. C. C. Nos. 1, 3, & 4.

Empire Pipe Line Company

Pipe Line Tariff

The rates published in this tariff are for the Interstate Transportation of Crude Petroleum by the Carrier's trunk pipe lines, subject to the regulations of the Company in effect at the time of shipment and lawfully on file with the Interstate Commerce Commission.

From	To	Rate per Barrel
Leonard Station, Okla.	Okmulgee, Okla.	10 Cts.
Elbing, Kansas	Eldorado, Kansas	10 "
Walnut Station, Kansas	Winfield, Kansas	7½ "
Boyer Station, Kansas	Arkansas City, Kansas	10 "
Elbing Station, Kansas	Ponca City, Okla.	12½ "
	Cushing, Okla.	20 "
Healdton Station, Okla.,	Gainesville, Texas	14 "
Walnut Station, Kansas	Black Bear, Okla.	15 "
Billings Station, Okla.	Cushing, Okla.	13 "
Cimmaron Station, Okla.	Cushing, Okla.	5 "
Cushing Field	Cushing, Okla.	8 "
(Nims Tank Farm)	Waurika, Okla.	27 "
Burkburnett, Texas	Healdton, Okla.	42 "
	Gainsville, Texas	56 "

In addition all oil tendered for shipment in Kansas
82 and Oklahoma accessible to the gathering lines of the Company will be subject to a further gathering charge of 12¢ per barrel, except in the case of oil tendered at Burkburnett, Texas, no gathering charge applies.

All rates are in cents per barrel of 42 U. S. Gallons.

Issued July 7, 1920. Effective August 9, 1920.

Issued on thirty days' notice.

Issued by F. C. Brown, General Manager, Empire Pipe Line Company, Bartlesville, Oklahoma.

Empire Pipe Line Company Regulations.

Preamble: This Company will undertake the interstate transportation of crude petroleum only, by trunk pipe line, receiving and delivering the same thru its own facilities and not otherwise, subject to the following regulations:

I. The Company may refuse to receive crude petroleum for shipment unless satisfactory evidence be given that the shipper or consignee has made provisions for the prompt acceptance of said crude petroleum, at the delivery station. The Company will not undertake, except at its option, to make partial deliveries of any lot of oil received by it for transportation.

II. Tenders for the shipment of any specified kind of such crude petroleum shall only become effective when tendered from the shipper, in connection with tenders from other shippers, for the same kind and quality of crude petroleum shall amount in the aggregate of 100,000 barrels or more, consigned to the same point of delivery; and subject to this requirement, tenders for shipment shall become operative in the order in which they shall have been received.

III. It will forward such crude petroleum when
88 there has been tendered to it by the shipper, individually, or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than 100,000 barrels, all of which shall be consigned for delivery to the same delivery point.

IV. This Company, as common carrier, is engaged in the transportation of crude petroleum only.

V. No crude petroleum will be accepted for transportation except good merchantable oil of a gravity of 30 deg. Beaume or lighter and which is free from water and other foreign substances. No oil will be accepted the quality of which has been seriously impaired through the character of the storage in which it has been held. Oil will be accepted for transportation only when free from all liens and charges and the company may require from the shipper satisfactory evidence of his perfect and unincumbered title.

VI. Prior to the receipt of oil from the tanks of the shipper, same must be tested by the regular agent of the receiving company for that purpose, and a deduction of three percent in quantity will be made for evaporation and other loss during transit, and the net balance remaining thereafter will be the amount to be transported and the limit of quantity for which the Company may be liable.

VII. All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in gravity of quality while in transit as may result

from the mixture of said crude petroleum with other crude petroleum in the pipe lines or tanks of this Company.

VIII. This Company shall be under no obligation to make delivery of the same crude petroleum which it may receive, but all oils received for shipment are to be delivered out of its common stock of crude at the delivery station.

IX. The Company shall not be required to transport oil except with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements; but the Company may at any time receipt of a consignment of oil upon 24 hours' notice to the shipper or consignee, tender oil for delivery from its common
84 stock at the point of destination at a rate not exceeding 20,000 barrels per day of 24 hours; and at the expiration of such notice a demurrage charge shall accrue on oil of such consignment so tendered but remaining undelivered at the rate of 1/10 of one cent per barrel for each day of 24 hours or fractional part thereof.

X. The shipper or consignee shall pay the transportation and all other lawful charges accruing on crude petroleum tendered for shipment, and if required, shall pay the same before delivery. Crude petroleum accepted for transportation shall be subject to a lien for all such charges.

XI. No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, strikes, riots or the act or default of the shipper or owner, or from any other cause not due to the negligence of the carrier; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above, but in such event shall be required to pay carriage charges only on the quantity of crude petroleum delivered.

XII. The amount of loss or damage, if any, for which the carrier shall be liable will be based upon the market value of the oil lost or damaged at the place and time of shipment plus the freight charges prepaid to the point of consignment, if any.

XIII. Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage

must be made in writing to the initial or delivered within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required and which are not made in writing to the carrier within four months as above specified, shall be instituted only within two years after the delivery, or in case of failure to make delivery, then within two years after a reasonable time for delivery has elapsed. No claims not in suit will
85 be paid after the lapse of two years as above, unless made in writing to the carrier within four months as above specified.

XIV. Any shipper may use, without additional charge, the Company's private telegraph lines for messages, incident to the business. The Company, however, is not to be liable for delivery of messages away from its offices, nor any error or delay in transmission, nor for any interruption of service.

XV. Separate pipage contracts in accord with this tariff and these regulations, covering further details, may be required of the proposed shipper before any duty of transportation shall arise.

By Mr. Denton: Your Honor, may I ask him a few questions?

By the Court: Go ahead.

Q. I wish you would just describe the bookkeeping entry involving the payment of oil—

A. Oil was paid for twice a month, the checks were issued in the amount of these—

By Mr. Hendler: Q. Issued by whom?

A. Cosden Pipe Line Company, the amount of the check was covered by cash, deposited in the bank to take care of the check.

By Mr. Denton: Q. Was the amount of this deposit in the exact number of dollars and cents?

By Mr. Hendler: Object to the counsel leading the witness in this manner.

By the Court: Overruled, exceptions allowed.

A. It was, yes, sir. We then credited the Cosden Pipe Line Company with this amount at the end of the month. We paid certain amounts for oil, one $1.60, another amount $1.80. The average price was $1.80 and $1.70. At the end of the month we made a separate and distinct charge for pipage.

Q. When was that made?

A. At the end of the month.

Q. What was that amount?

86 A. Sometimes five and sometimes ten.

Q. Was that the number of barrels piped during the month or the number of barrels moved during the month?

A. No, sir. The number of barrels delivered at the end of the month.

Q. That was five cents a barrel?

A. Yes, sir.

Q. Was that in a separate charge account?

A. Yes, sir. We charged the Cosden Company with that amount.

Cross-Examination by Mr. Hendler.

By Mr. Hendler: I move to strike out all of the testimony of the witness with reference to net profits and operating expenses.

By the Court: Overruled, exceptions allowed.

Q. Mr. Thompson, if I understand you the money was advanced to the Cosden Pipe Line Company by Cosden & Company.

A. It was.

Q. They had a separate core of employees outside of the office?

A. Yes, sir.

Q. How were they paid?

A. Paid by the Cosden Pipe Line Company checks.

Q. Money for that was advanced by the Cosden & Company?

A. Usually.

Q. Wasn't it always.

A. Yes, sir.

Q. The office force was practically the same force?

A. No, sir.

Q. The bookkeeper of the Cosden Company was the Cosden Pipe Line bookkeeper?

A. Yes, sir.

Q. Cosden & Company advanced this money now to the Cosden Pipe Line Company by issuing checks to the Cosden Pipe Line Company twice a month?

A. Yes, sir.

Q. All of the oil out of the field was paid for by the Cosden Pipe Line Company from funds advanced by Cosden & Company?

A. Yes, sir.

87 Q. All of the run tickets were in the name of the Cosden Pipe Line Company?

A. Yes, sir.

Witness excused.

Mr. E. R. Perry, being first duly sworn upon his oath to testify to the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

Direct Examination by Mr. Wills.

Q. What is your name?

A. E. R. Perry.

Q. Where do you live?

A. Tulsa, Oklahoma.

Q. Mr. Perry, were you connected with the Cosden Pipe Line Company and the Cosden and Company during the period involved in this case, from 1917 to 1922?

A. Yes, sir.

Q. What connection do you have with those two companies?

A. Vice President of both.

Q. You were such, prior to November, 1917, too?

A. Yes, sir.

Q. And the period subsequent to 1922?

A. Yes, sir.

Q. I will ask you to explain to the Court, just how the charges that the Cosden Pipe Line Co. made for carriage of oil to the Cosden & Company were arrived at.

A. By a system of figuring.

Q. What was that system of figuring?

A. By figuring from month to month what the expenses of operating the Pipe Line would be. Also figuring how much oil would be piped into the Pipe Line then arrive at the figure per barrel based on those figures.

Q. That was the basis on which the charges were made?

A. The pipe line charges were, yes, sir.

Q. Mr. Perry, are you familiar with the method in which oil was purchased during this period of time?

A. Yes, sir.

Q. Explain that to the Court.

A. We purchased oil from any producer, any new oil—

By Mr. Hendler:

88 Q. Who do you mean by we?

A. The Cosden & Company, unless otherwise specified. We would then charge the Cosden Pipe Line Company for connecting up their line with the tank of these producers.

Q. What company do you refer to when you say we?

A. The Cosden & Company.

A. After the connections were made then the oil was run into the Cosden Pipe Line Company's lines and transported by

them to the West Tulsa Field and delivered to other companies with whom we might be doing business. When a new well came in like all other companies if it was near out line we tried to get that oil and pump it into our pipe lines taking it to the refinery.

By Mr. Wills:

Q. Mr. Perry, was the oil that the Pipe Line Company had, taken out of the field, sold to outside parties before it reached the refinery?

A. Yes, sir.

Q. When that happened who sold the oil?

A. Cosden & Company.

Q. Who received payment?

A. Cosden & Company.

Q. This was true in all instances you know of?

A. Yes, sir.

Cross-Examination by Mr. Hendler.

Q. You do not intend to dispute anything that Mr. Thompson testified to?

A. No, sir.

Q. In addition to the oil that was transported, taken to the refinery of the Cosden Company, and that which was transported to distilleries for outside people, there was some considerable oil stored?

A. Yes, sir.

Q. It didn't all go to the distillery or refinery?

A. Ultimately.

Q. Didn't all go directly from the fields from the leases to outside persons?

A. No, sir.

89 Q. Will you explain about the sales of oil by Cosden and Company, how frequently were sales like that made?

A. Kind of frequently during 17, 18 and 19.

Q. Were you present when Mr. Rogers made an examination about two years ago?

A. Yes, sir. I have been connected with the Cosden Pipe Line Company since 1924.

Q. Could you tell with the exception of that one sale of oil to the Pierce Oil Company, of any transaction, in any amount, when oil was sold to outside persons?

A. Yes, sir. Delivered to Continental Oil Refining Co., West Tulsa and—

Q. When was that?

A. During those years mentioned.

Q. Do you know that any of the oil was sold by the Cosden Company?

A. Yes, sir.

Q. On which an additional charge was made by the Company which was included in the additional taxes, that has not been refunded?

A. I didn't have charge of paying the taxes, I therefore do not know what taxes were paid.

Witness excused.

Mr. Thompson is Re-Called by Mr. Hendler.

Q. You were present when Mr. Rogers made his examination of the books?

A. Yes, sir.

Q. You disclosed to him every case in which oil had been sold by the Cosden & Company out of the fields which were delivered directly to sub-purchasers on which charges were made by the Pipe Line Company?

A. Yes, sir.

Q. Do you know of any case, in any amount, on which refund was not made?

A. Yes, sir.

Witness excused.

Mr. B. R. Graham, being first duly sworn upon his
90 oath to testify to the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

Direct Examination by Mr. Wills.

Q. State your name?

A. B. R. Graham.

Q. What is your occupation?

A. Superintendent of the Cosden Pipe Line Company.

Q. How long Mr. Graham have you been connected with the pipe line company?

A. For the Cosden Pipe Line?

Q. No, any one.

A. About twenty-six years.

Q. During that twenty-six years, what has been the nature of your experience with operating pipe lines?

A. That is all I have done for twenty-six years.

Q. What other companies have you worked for?

A. Prairie Pipe Line Company, Empire Pipe Line Company.

Q. How long were you with the Prairie?

A. Eleven or twelve years.

Q. How long with the Empire?

A. I believe four years.

Q. Mr. Graham, I believe a common carrier pipe line carrier, has trunk lines in addition to gathering lines?

A. Yes, sir.

Q. Do common carrier pipe lines receive oil in trunk lines between tariff stations?

A. Only at pump stations.

Q. Is that usual or unusual?

A. Unusual.

Q. You are familiar with the system of the plaintiff in this case?

A. Yes, sir.

Q. You are familiar with its operation?

A. Yes, sir.

Q. What is the practice of the Cosden Pipe Line Company with reference to where it received oil into those lines?

A. Received any all along the oil line where a
91 well comes in.

Q. Regardless of the pumping station?

A. When it was closer to a pump station than the line going by to Tulsa.

Q. In the operation of the Cosden Pipe Line Company, was any difference made between gathering lines and trunk line rates?

A. No, sir.

Q. Have those gathering charges been one lump sum?

A. Yes, sir.

Q. Mr. Graham, I will ask you to state your opinion as to whether the Cosden Pipe Line Company has trunk or main lines that were comparable to trunk or main lines of a common carrier pipe line company?

By Mr. Hendler: Object to the conclusion of the witness.

By the Court: Sustained, objections allowed.

Q. Mr. Graham, wherein does the system of the Cosden Pipe Line Company differ from the Empire, Gulf or any common carrier pipe line company?

By Mr. Hendler: Object to the question for the reason it is leading.

By the Court: Overruled, objections allowed.

Q. Is there a difference?

A. Yes, sir.

Q. Explain the difference?

A. Trunk lines operate separately to the Prairie Company. Under different men, different foremen and superintendents. Where one company receives order from men operating the trunk line, different men operate the gathering system.

Q. Any other difference?

A. Well, a trunk line handles oil after it is gathered.

Q. You are familiar with what is known as trunk lines and common carrier pipe lines?

A. Yes, sir.

Q. What is the difference between the gathering system of a common carrier pipe line and the Cosden Pipe Line Company?

By Mr. Hendler: I renew my objection to the form
92 of the question, and calling for the conclusion of the witness.

By the Court: Sustained, exceptions allowed.

Cross-Examination by Mr. Hendler.

Q. You say they take orders from different foremen?

A. Yes, sir.

Q. The same would be true on a railroad, the freight men would be under the orders of the Freight Department and the passenger men from the Passenger Department?

A. It is different from that. A construction foreman would be under neither of those two.

Q. It is all the same system just as the brank line is to the railroad. It would be part of the main line?

A. Yes, sir.

Q. What is the difference between the pipes that were laid out in the leases and those laid from the tank farms into Tulsa?

A. No difference.

Q. All the same size?

A. All the way from two and a half up to ten inch.

Q. Same as all the other companies?

A. Yes, sir.

Re-Direct Examination by Mr. Wills.

Q. Is there any difference in the construction of the system of the Cosden Pipe Line Company and the gathering system of common pipe lines?

A. A number of them.

Q. Is there any difference between the Cosden Pipe Line Company system and trunk lines of common carrier pipe lines?

A. Sure.

Q. What is the difference?

A. They don't become trunk lines until after they gather the oil.

Q. Do you know whether the Cosden Pipe Line System have any tariff stations at all?

A. No, sir.

Q. Trunk lines, of common carrier systems do have tariff stations?

A. Yes, sir.

93 Re-Cross by Mr. Hendler.

Q. The trunk line is the main stem of a system?

A. Yes, sir.

Q. You said awhile ago that charges made by the pipe line were always gathering charges. Are you familiar with the gathering charges up in that field?

A. The charges are generally around twelve and a half cents.

Q. They charged the Pierce Oil Corporation more than that?

A. I think the testimony here shows the charge was more than that.

Q. Now I figure they charged the Pierce Oil Company twenty-two cents.

A. I think so.

Q. That would be a flat gathering charge?

A. No, sir.

Re-Direct Examination by Mr. Wills.

Q. Do you know how they arrived at that?

A. Made a distinct charge for running of additional lines to make deliveries of oil to the Pierce Company.

Re-Cross Examination by Mr. Hendler.

Q. How far did they have to lay additional lines?

A. I don't know. I didn't go over in that neighborhood the other day.

Plaintiff rests.

Defendant's Evidence.

By Mr. Hendler: I renew my objection and motion to strike out all of the foregoing testimony relative to value, net profits.

By the Court: Overruled, exceptions allowed.

By Mr. Hendler: We offer in evidence defendant's Exhibits 1, 2, 3, and 4.

By Mr. Wills: To which we object for the reason they are incompetent, irrelevant and immaterial.

By the Court: Overruled, exceptions allowed. Let them be admitted.

Defendant's Exhibit 1.

Interstate Commerce Commission.
Washington.

I, George B. McGinty, Secretary of the Interstate
94 Commerce Commission, do hereby certify that the schedule hereto attached is a true copy of the Texas Pipe Line Company of Oklahoma, Joint Pipe Line Tariff, I. C. C. No. 3, said schedule having been filed with the said

Interstate Commerce Commission on August 6, 1919.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 21st day of February, A. D. 1928. (Seal) George B. McGinty, Secretary of the Interstate Commerce Commission.

No supplement to this tariff will be issued except for the purpose of canceling the tariff.

I. C. C. No. 3 canceling I. C. C. No. 2.

The Texas Pipe Line Company of Oklahoma
in connection with
The Texas Pipe Line Company, F X 3—No. 1
Joint Pipe Line Tariff

The rates published in this tariff are for the interstate transportation of crude petroleum through the pipe lines of these companies, are subject to the regulations printed on page 2 hereof, and are expressed in cents per barrel of 42 United States gallons.

From points in the State of Oklahoma now established for the reception of crude petroleum into the pipe lines of The Texas Pipe Line Company of Oklahoma in the oil pools known as

Artesian	Dresser	Morris
Avant	Flat Rock	Okmulgee
Bald Hill	Glenn	Osage Junction
*Bartlesville	Graham	Owasso
Bird Creek	Grayson	Quay
Bixby	Hamilton	Red Fork
*Boynton	Healdton	Stone Bluff
*Collinsville	Henryetta	Turley
*Copan	*Hogshooter	West Tulsa
Cushing	Hominy	Wild Horse
*Dewey	Lost City	Youngstown

To the loading racks or other established delivery places of The Texas Pipe Line Company at or near the following points in the State of Texas at the rates stated:

West Dallas	20 cts.
Eleanor	20 cts.
Corsicana	25 cts.
Beaumont	35 cts.
Nederland	37½ cts.
Port Arthur	37½ cts.

On all deliveries at destination to consignee's ves-
95 sels or to consignee's tanks connected with pipe lines

of The Texas Pipe Line Company a further charge of 2½ cents per barrel.

Additional for gathering at point of origin, where distance is 15 miles or more, 20 cents per barrel; where distance is less than 15 miles, but more than 10 miles, 15 cents per barrel; and where distance is 10 miles or less, 12½ cents per barrel.

Issued on one day's notice, under special permission of the Interstate Commerce Commission, No. 48114 of August 4, 1919.

Issued August 5, 1919. Effective August 10, 1919.

M. MORAN,
President, The Texas Pipe Line Company of Oklahoma, Tulsa, Oklahoma.

*This point of origin will be abandoned on and after September 10, 1919. Changes which result from abandonment of stations contained in this tariff are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 250 of January 8, 1918, without formal hearing which approval shall not affect any subsequent proceeding relative thereto.

Regulations.

This company will undertake the interstate transportation of crude petroleum only, receiving and delivering such oil through its own pipe lines and the lines of its connecting pipe line company, and not otherwise, subject to the following regulations:

1. No oil will be received except good merchantable oil properly settled and free from water, sediment and other impurities.

2. Storage necessarily incident to transportation and only such storage will be provided by the company, and the shipper of consignee must provide facilities for receiving the oil at destination.

3. The company reserves the right to impose reasonable restrictions fixing the minimum quantities of oil which will be received and in the event of tenders in excess of its facilities or capacity the right to make equitable apportionments.

4. The company shall have the right to reject any oil which may be involved in litigation, or the title of which may be in dispute, or which may be encumbered by lien or charge of any kind, and it may require of the shipper satisfactory evidence of his perfect and unincumbered title.

5. Prior to its receipt oil must be gauged and tested by the representative of the company. Quantities will be computed from regularly compiled tank tables. In addition to the deductions of the tank tables corrections will be made for temperature above normal. A deduction of one per cent, also will be made for evaporation and other loss during transit, and the net balance will be the quantity deliverable by the company.

6. Oil will be received subject to the consequences of mixing with other oils, and the company shall be under no obligations to make delivery of the identical oil received, but may make delivery out of its common stock.

7. The company may refuse to accept oil for transportation unless satisfactory evidence be furnished that the shipper or consignee has made provisions for prompt receipt thereof at destination.

8. No risks of fire, storm, flood, or act of God, and
96 no risk resulting from strikes, riots, insurrection, rebellion, war, or act of the public enemy, or from quarantine or authority of law or any order, requisition or necessity of the government of the United States in time of war, or from any cause whatsoever, except its own direct negligence, shall be borne by the company; and in case of loss from any of such causes, other than the negligence of the company, after oil has been received for transportation and before the same has been delivered to the consignee, the shipper shall bear a loss in such proportion as the amount of his shipment is to all of the oil in the custody of the company at the time of such loss, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after a deduction of his due proportion of such loss, but in such event the shipper shall be required to pay charges only on the quantity of oil delivered.

9. The company shall not be required to transport oil except with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements; but the company may at any time after receipt of a consignment of oil upon 24 hours' notice to the shipper or consignee tender oil for delivery from its common stock at the point of destination at a rate not exceeding 20,000 barrels per day of 24 hours; and at the expiration of such notice a demurrage charge shall accrue on oil of such consignment so tendered but remaining undelivered at the rate of one

tenth of one cent per barrel for each day of 24 hours or fractional part thereof.

10. The company shall have a lien on all oil received for transportation to secure the payment of all charges, including demurrage and may withhold delivery of oil until such charges are paid.

11. Upon default in the payment of the charges of the company when due, or even in the absence of unpaid charges when there shall be a failure to take oil at the point of destination and thereby relieve the storage and other facilities of the company, oil may be sold by the company or the representative at public auction at the office of the company in Tulsa, Oklahoma, after publication for five successive days of notice in a newspaper published in said city of the time and place of sale and the quantity of oil to be sold. The proceeds of sale shall be applied to the payment of the charges of the company, if any, and the balance shall be held for whomsoever may be lawfully entitled thereto.

12. Without additional charge patrons may use the private telegraph line of the company for messages incident to the business, but the company shall not be liable for delivery of messages away from its offices and it shall not be liable for errors or delay in transmission or for interruption of the service.

13. Notice of claims for loss, damage or delay in connection with shipments must be made to the company in writing within 90 days after the same shall have accrued, or, in case of failure to make delivery, within 90 days after a reasonable time for delivery shall have elapsed. Such claims fully amplified must be filed with the company within 90 days thereafter and unless so made and filed the company shall be wholly released and discharged therefrom and shall not be liable therefor in any court of justice. And no suit at law or in equity shall be maintained upon any claim unless instituted within two years after the cause of action accrued.

14. Separate pipeage contracts in accord with this tariff and these regulations covering further details may be required by the company before any duty for transportation shall arise.

Defendant's Exhibit 2.

Interstate Commerce Commission,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedule hereto attached is a true copy of the Texas Pipe Line Company of Oklahoma, Joint Pipe Line Tariff, I. C. C. No. 2, said schedule having been filed with the said Interstate Commerce
97 Commission on August 10, 1917.

In witness whereof, I have hereunto set my hand affixed the seal of said Commission this 21st day of February, A. D. 1928. (Seal) George B. McGinty, Secretary of the Interstate Commerce Commission.

No supplement to this tariff will be issued except for the purpose of canceling the tariff.

I. C. C. No. 2 Canceling I. C. C. No. 12 of the Texas Co.

The Texas Pipe Line Company of Oklahoma
in connection with
The Texas Pipe Line Company, F X 3—No. 1
Joint Pipe Line Tariff

The rates published in this tariff are for the interstate transportation of crude petroleum through the pipe lines of these companies, are subject to the regulations printed on page 2 hereof, and are expressed in cents per barrel of 42 United States gallons.

From points in the state of Oklahoma now established for the reception of crude petroleum into the pipe lines of the Texas Pipe Line Company of Oklahoma in the oil pools known as

Artesian	Cushing	Hominy
Avant	Dewey	Lost City
Bald Hill	Flat Rock	Morris
Bartlesville	Glenn	Okmulgee
Bird Creek	Grayson	Owasso
Bixby	Hamilton	Red Fork
Boynton	Healdton	Stone Bluff
Collinsville	Henryetta	Turley
Copan	Hogshooter	

To the loading racks or other established delivery places of the Texas Pipe Line Company at or near the following points in the state of Texas at the rates stated:

West Dallas	20 cts.
Eleanor	20 cts.
Corsicana	25 cts.
Beaumont	35 cts.
Nederland	37½ cts.
Port Arthur	37½ cts.

On all deliveries at destination to consignee's vessels or to consignee's tanks connected with pipe lines of The Texas Pipe Line Company a further charge of 3½ cents per barrel.

Additional for gathering at point of origin, where distance is 15 miles or more, 20 cents per barrel; where distance is less than 15 miles, but more than 10 miles, 15 cents per barrel; and where distance is 10 miles or less, 12½ cents per barrel.

Issued August 10, 1917. Effective September 15, 1917.

M. MORAN,
President, The Texas Pipe Line Company of Oklahoma, Tulsa, Oklahoma.

Note: Osage Lots and Vera, appearing in the con-
98 celed tariff, have been abandoned because of pools failing and lines idel.

Regulations.

This company will undertake the interstate transportation of crude petroleum only, receiving and delivering such oil through its own pipe lines and the lines of its connecting pipe line company, and not otherwise, subject to the following regulations:

1. No oil will be received except good merchantable oil properly settled and free from water, sediment and other impurities.

2. Storage necessarily incident to transportation and only such storage will be provided by the company, and the shipper or consignee must provide facilities for receiving the oil at destination.

3. The company reserves the right to impose reasonable restrictions fixing the minimum quantities of oil which will be received and in the event of tenders in excess of its facilities or capacity the right to make equitable apportionments.

4. The company shall have the right to reject any oil which may be involved in litigation, or the title of which may be in dispute, or which may be encumbered by lien or charge of any kind, and it may require of the shipper satisfactory evidence of his perfect and unincumbered title.

5. Prior to its receipt oil must be gauged and tested by the representative of the company. Quantities will be computed from regularly compiled tank tables. In addition to the deductions of the tank tables corrections will be made for temperature above normal. A deduction of one per cent, also will be made for evaporation and other loss during transit. And the net balance will be the quantity deliverable by the company.

6. Oil will be received subject to the consequences of mixing with other oils, and the company shall be under no obligation to make delivery of the identical oil received, but may make delivery out of its common stock.

7. The company may refuse to accept oil for transportation unless satisfactory evidence be furnished that the shipper or consignee has made provision for prompt receipt thereof at destination.

8. No risk of fire, storm, flood, or act of God, and no risk resulting from strikes, riots, insurrection, rebellion, war, or act of the public enemy, or from quarantine or authority of law or any order, requisition or necessity of the government of the United States in time of war, or from any cause whatsoever, except its own direct negligence, shall be borne by the company; and in case of loss from any of such causes, other than the negligence of the company, after oil has been received for transportation and before the same has been delivered to the consignee, the shipper shall bear a loss in such proportion as the amount of his shipment is to all of the oil in the custody of the company at the time of such loss, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after a deduction of his due proportion of such loss, but in such event the shipper shall be required to pay charges only on the quantity of oil delivered.

9. The company shall not be required to transport oil except with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements but the company may at any time after receipt of a consignment of oil upon 24 hours' notice to the shipper or consignee tender oil for delivery from its common stock at the point of designation at a rate not exceeding 20,000 barrels per day of 24 hours; and at the expiration of such notice a demurrage charge shall accrue on oil of such consignment so tendered but remaining undelivered at the rate of one-

tenth of one cent per barrel for each day of 24 hours or fractional part thereof.

10. The company shall have a lien on all oil received for transportation to secure the payment of all charges, including demurrage, and may withhold delivery of oil until such charges are paid.

11. Upon default in the payment of the charges
99 of the company when due, or even in the absence of unpaid charges when there shall be a failure to take oil at the point of destination and thereby relieve the storage and other facilities of the company, oil may be sold by the company or its representative at public auction at the office of the company in Tulsa, Oklahoma, after publication for five successive days of notice in a newspaper published in said city of the time and place of sale and the quantity of oil to be sold. The proceeds of sale shall be applied to the payment of the charges of the company, if any, and the balance shall be held for whomsoever may be lawfully entitled thereto.

12. Without additional charge patrons may use the private telegraph line of the company for messages incident to the business, but the company shall not be liable for delivery of messages away from its offices and it shall not be liable for errors or delay in transmission or for interruption of the service.

13. Notice of claims for loss, damage or delay in connection with shipments must be made to the company in writing within 90 days after the same shall have accrued, or, in case of failure to make delivery within 90 days after a reasonable time for delivery shall have elapsed. Such claims fully amplified must be filed with the company within 90 days thereafter and unless so made and filed the company shall be wholly released and discharged therefrom and shall not be liable therefor in any court of justice. And no suit at law or in equity shall be maintained upon any claim unless instituted within two years after the cause of action accrued.

14. Separate pipeage contracts in accord with this tariff and these regulations covering further details may be required by the company before any duty for transportation shall arise.

Defendant's Exhibit 3.

Interstate Commerce Commission
Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedule hereto attached is a true copy of the Texas Company, Pipe Line Tariff, I. C. C. No. 12, said schedule having been filed with the said Interstate Commerce Commission on June 28, 1917.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 21st day of February, A. D. 1928. (Seal) George B. McGinty, Secretary of the Interstate Commerce Commission.

No supplement to this tariff will be issued except for the purpose of canceling the tariff.

I. C. C. No. 12 Canceling L. C. C. No. 9.

The Texas Company
Pipe Line Tariff

The rates published in this tariff are for the inter-
100 state transportation of crude petroleum through the pipe lines of The Texas Company, and are subject to the regulations printed on page 2 hereof, and are expressed in cents per barrel of 42 United States gallons.

From points in the state of Oklahoma now established for the reception of crude petroleum into the pipe lines of The Texas Company in the oil pools known as

Artesian	Cushing	Hominy
Avant	Dewey	Lost City
Bald Hill	Flat Rock	Morris
Bartlesville	Glenn	Okmulgee
Bird Creek	Grayson	Osage Lots
Bixby	Hamilton	Owasso
Boynton	Healdton	Red Fork
Collinsville	Henryetta	Stone Bluff
Copan	Hogshooter	Turley
		Vera

To the following points in the state of Texas at the rates stated:

West Dallas	20 cts.
Eleanor	20 cts.
Corsicana	25 cts.
Beaumont	35 cts.
Port Arthur	37½ cts.

(Healdton and Hominy are points on newly constructed lines, from or to which no rates have heretofore applied.)

On all deliveries at destination to consignee's vessels or to consignee's tanks connected with pipe lines of The Texas Company a further charge of 2½ cents per barrel.

Additional for gathering at point of origin where distance is 15 miles or more, 20 cents per barrel; where distance is less than 15 miles, but more than 10 miles, 15 cents per barrel; and where distance is less than 10 miles, 12½ cents per barrel.

Issued under special permission of the Interstate Commerce Commission No. 36.014 of February 8, 1916, and subject to change as provided by law.

Issued June 25, 1917. Effective July 1, 1917.

T. J. DONOGHUE,
First Vice-President, The Texas Company, Houston, Texas.

Regulations.

This company will undertake the interstate transportation of crude petroleum only, receiving and delivering such oil through its own pipe lines and not otherwise, subject to the following regulations:

1. No oil will be received except good merchantable oil of gravity at least as high as 30 degrees Beaume.

2. Storage necessarily incident to transportation and only such storage will be provided by the company, and the shipper or consignee must provide facilities for receiving the oil at destination.

3. The company reserves the right to impose reasonable restrictions fixing the minimum quantities of oil which will be received and in the event of tenders in excess of its facilities or capacity the right to make equitable apportionments.

4. The company shall have the right to reject any oil which may be involved in litigation, or the title of which may be in dispute, or which may be encumbered by lien or charge of any kind, and it may require of the shipper satisfactory evidence of his perfect and unencumbered title.

5. Prior to its receipt oil must be tested by the
101 representative of the company, and a deduction of three per cent in quantity will be made for evapora-

tion and other loss during transit, and the net balance will be the quantity deliverable by the company.

6. Oil will be received subject to the consequences of mixing with other oils, and the company shall be under no obligation to make delivery of the identical oil received, but may make delivery out of its common stock.

7. The company may refuse to accept oil for transportation unless satisfactory evidence be furnished that the shipper or consignee has made provision for prompt receipt thereof at destination.

8. No risk of fire, storm, flood, or act of God, and no risk resulting from strikes, riots, insurrection, rebellion, war, or act of the public enemy, or from quarantine or authority of law or any cause except the direct negligence of the company shall be borne by the company; and in case of loss from any of such causes after oil has been received for transportation and before the same has been delivered to the consignee, the shipper shall bear a loss in such proportion as the amount of his shipment is to all of the oil in the custody of the pipe line department of the company at the time of such loss, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after a deduction of his due proportion of such loss, but in such event the shipper shall be required to pay charges only on the quantity of oil delivered.

9. The company shall not be required to transport oil except with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements; but the company may at any time after receipt of a consignment of oil upon 24 hours' notice to the shipper or consignee tender oil for delivery from its common stock at the point of destination, at a rate not exceeding 20,000 barrels per day of 24 hours; and at the expiration of such notice a demurrage charge shall accrue on oil of such consignment so tendered but remaining undelivered at the rate of one-tenth of one cent per barrel for each day of 24 hours or fractional part thereof.

10. The company shall have a lien on all oil received for transportation to secure the payment of all charges, including demurrage, and may withhold delivery of oil until such charges are paid.

11. Upon defa*lut* in the payment of the charges of the company when due, or even in the absence of unpaid charges

when there shall be a failure to take oil at the point of destination and thereby relieve the storage and other facilities of the company, oil may be sold by the company or its representative at public auction at the office of the company in Houston, Texas, after publication for five successive days of notice in a newspaper published in said city of the time and place of sale and the quantity of oil to be sold. The proceeds of sale shall be applied to the payment of the charges of the company, if any, and the balance shall be held for whomsoever may be lawfully entitled thereto.

12. Without additional charge patrons may use the private telegraph line of the company for messages incident to the business, but the company shall not be liable for delivery of messages away from its offices and it shall not be liable for errors or delay in transmission or for interruption of the service.

13. Notice of claims for loss, damage or delay in connection with shipments must be made to the company in writing within 90 days after the same shall have accrued, or, in case of failure to make delivery within 90 days after a reasonable time for delivery shall have elapsed. Such claims fully amplified must be filed with the company within 90 days thereafter and unless so made and filed the company shall be wholly released and discharged therefrom and shall not be liable therefor in any court of justice. And no suit at law or in equity shall be maintained upon any claim unless instituted within two years after the cause of action accrued.

14. Separate pipeage contracts in accord with this tariff and these regulations covering further details may be required by the company before any duty for transportation shall arise.

Defendant's Exhibit 4.

Interstate Commerce Commission
Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached, and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to-wit:

Texas Pipe Line Company of Oklahoma, Adoption
102 Notice I. C. C. No. 1, filed June 29, 1917.

Supplement No. 1 to said I. C. C. No. 1, filed March 17, 1923.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 21st day of February, A. D. 1928. (Seal) George B. McGinty, Secretary of the Interstate Commerce Commission.

I. C. C. No. 1

The Texas Pipe Line Company of Oklahoma

Adoption Notice

The Texas Pipe Line Company of Oklahoma hereby adopts, ratifies and makes its own, in every respect as if same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by The Texas Company prior to July 1, 1917, the beginning of its possession, applicable from all points in the state of Oklahoma. By this notice it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which have been heretofore filed with said Commission.

Issued under authority of Rule 9 (i), Tariff Circular 18-A. Issued June 27, 1917. Effective July 1, 1917.

M. MORAN,
President, The Texas Pipe Line Company of Oklahoma, Tulsa, Oklahoma.

Supplement No. 1 to I. C. C. No. 1

The Texas Pipe Line Company of Oklahoma

Cancellation of Adoption Notice

The Texas Pipe Line Company of Oklahoma hereby
103 certifies that all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever filed with the Interstate Commerce Commission by The Texas Company prior to July 1, 1917, from all points in the State of Oklahoma, have been cancelled, reissued or supplanted by new documents, publications and tariffs on the part of The Texas Pipe Line Company of Oklahoma. Therefore, the adoption notice I. C. C. No. 1 issued by The Texas Pipe Line Company

of Oklahoma, June 27, 1917, effective July 1, 1917, is hereby cancelled.

Issued March 20, 1923. Effective April 20, 1923.

M. MORAN,
President, The Texas Pipe Line Company of Oklahoma, Tulsa, Oklahoma.

By Mr. Hendler: Comes now the defendant and moves the court to render a judgment in favor of the defendant and against the plaintiff because of the failure of the plaintiff to sustain the burden placed upon it, and because of their failure to prove that any part of the taxes so assessed against them were erroneous.

By the Court: Overruled, exceptions allowed.

By Mr. Wills: Comes now the plaintiff at this time and moves the court to render a judgment in its favor and against the defendant based upon the law and the evidence.

By the Court: Overruled, exceptions allowed.

This is all the evidence offered and taken at the trial of the above entitled case.

Stenographer's Certificate.

I, Minta Douglas, Court Reporter, do hereby certify that I took down in shorthand all of the oral testimony offered at the trial of the above entitled cause, together with all of the objections offered thereto, rulings of the court thereon and exceptions allowed, and that the within and foregoing pages numbered from ..... to ....., contain a full, true and complete copy thereof.

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In witness whereof, I have hereto, this 21st day of April, 1930, subscribed my name, Minta Douglas, Official Reporter.

Thereupon at the close of the evidence above the court took the cause under advisement and at the same time granted to plaintiff and defendant leave to file written requests for findings of fact and conclusions of law.

Thereafter plaintiff filed written requests for findings of

facts and conclusions of law, which omitting caption are as follows:

Plaintiff's Request for Findings of Fact and Conclusions of Law.

Comes now the above named plaintiff, Cosden Pipe Line Company, and respectfully requests the court, at the conclusion of the trial of this cause, to make Special Findings of Fact and Conclusions of Law herein as follows:

Findings of Fact.

1st. That the court make special findings of fact upon the issues of fact involved herein.

2nd. That the court find each and all of the issues of fact involved herein in favor of the plaintiff.

3rd. That the court find each and all of the stipulated and agreed facts set out, stated and contained in the Agreed Statement of Facts, which was entered into by the above named plaintiff, and the above named defendant by and through their respective attorneys of record and which said Agreed Statement of Facts was filed herein prior to the commencement of the trial of said cause, and which said Agreed Statement of Facts was introduced in evidence by the plaintiff upon the trial of said cause.

4th. That the court find that the additional assessment of $60,863.71 made against the plaintiff for the carriage of oil by plaintiff from November 1, 1917, to March 31, 1919, included $995.90 for 99,590.31 barrels of oil, which the Commissioner of Internal Revenue, in making said additional assessment, determined that the plaintiff carried for the Pierce Oil Corporation and made no charge therefor, and said
105 additional assessment of $995.90 was obtained by computing the tax on a rate of 20¢ per barrel on said 99,590.31 barrels of oil; that said oil was collected in a tank on a tank farm of plaintiff's near Cushing, Oklahoma, and was carried by plaintiff to said tank from the lease or leases from which the same was produced, and which said lease or leases were located in the vicinity of Cushing, Oklahoma; that said oil was sold to the Pierce Oil Corporation by Cosden & Company on or about the 12th day of November, 1917, under a written contract, and the same was delivered to the

said Pierce Oil Corporation in the aforesaid tank; and that thereafter the Pierce Oil Corporation connected its lines to the aforesaid tank and carried said oil away.

5th. That the court find that as to the oil involved in the additional assessments for the period from November 1, 1917, to March 31, 1919, and for the period from April 1, 1919, to December 31, 1921, other than the oil covered by the Agreed Statement of Facts and the Pierce Oil Corporation oil referred to in the preceding paragraph, the plaintiff introduced no evidence save and except to the effect that the amount or amounts thereof were comparatively small.

6th. That the court find that from November 1, 1917, to December 31, 1921, the principal business of the plaintiff has been carrying oil for Cosden & Company; that during said period of time the plaintiff has never held itself out as a common carrier; and that the State of Oklahoma has never required the plaintiff to file or publish any rates or tariffs covering the carriage of oil.

7th. That the court find that from November 1, 1917, to December 31, 1921, the plaintiff filed with the Commissioner of Internal Revenue monthly returns as to the carriage of oil by it and paid the amount of taxes shown by said returns to be due and payable.

8th. That the court find that all oil carried by the plaintiff for Cosden & Company from November 1, 1917, to March 31, 1919, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as the plaintiff acted in connection with the purchase of said oil it did so as the agent of Cosden & Company, and that it never at any time owned said oil.

9th. That the court find that all oil carried by the plaintiff for Cosden & Company from April 1, 1919, to December 31, 1921, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as the plaintiff acted in connection with the purchase of said oil it did so as the agent of Cosden & Company, and that it never at any time owned said oil.

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10th. That the court find that from a date several months prior to November 1, 1917, to July 1, 1918, the plaintiff

charged, collected and received from Cosden & Company 5 cents per barrel for all oil carried by it for the said Cosden & Company, during said period of time.

11th. That the court find that the plaintiff neither made nor collected nor received anything from Cosden & Company for any oil carried by it, for the said Cosden & Company between July 1, 1918, and March 31, 1919.

12th. That the court find that from April 1, 1919, to the present time the plaintiff has charged, collected and received from Cosden & Company 10 cents per barrel for all oil carried by it for the said Cosden & Company, during said period of time.

13th. That the court find that, except for the year 1920, plaintiff's revenues from the carriage of all oil carried by it, except where no charge or charges were made, were sufficient to take care of its operating expenses in connection with the carriage of such oil, or, in other words, the actual cost and expenses of carrying said oil.

14th. That the court find that, except for the year 1920, the charges which the plaintiff made, collected and received from Cosden & Company for the carriage of all oil carried by it for the said Cosden & Company, except where no charge or charges were made, were sufficient to take care of the operating expenses in connection with the carriage of such oil, or, in other words, the actual cost and expense of carrying said oil.

15th. That the court find that the average of all charges made by the plaintiff for the carriage of all oil carried by it from November 1, 1917, to March 31, 1919, for all outside or non-affiliated parties, was 13 cents per barrel, and that this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

16th. That the court find that the average of all charges made by the plaintiff for the carriage of all oil carried by it from April 1, 1919, to December 31, 1921, for all outside or non-affiliated parties was 16.4 cents per barrel, and this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

17th. That the court find that the average of all
107 charges made by the plaintiff for the carriage of all oil carried by it from November 1, 1917, to March 31, 1919, for all outside or non-affiliated parties, and for the 645,120.64 barrels of oil owned by Cosden & Company and carried by plaintiff for it during said period, and which said oil is referred to in paragraph 7 of the above referred to Agreed Statement of Facts, was 11.74 cents per barrel, and that this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

18th. That the court find that the average of all charges made by the plaintiff for the carriage of all oil from November 1, 1917, to March 31, 1919, for all parties whether affiliated or non-affiliated or not, and including the 645,120.64 barrels of oil owned by Cosden & Company and carried by plaintiff for it during said period, which is referred to in paragraph 7 of the above referred to Agreed Statement of Facts, was 9.5 cents per barrel, and this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

19th. That the court find that the average of all charges made by the plaintiff for all oil carried by it from April 1, 1919, to December 31, 1921, for all parties, whether affiliated or non-affiliated or not, was 11.17 cents per barrel, and this charge is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying same.

20th. That the court find that from November 1, 1917, to March 31, 1919, the plaintiff carried for outside or non-affiliated parties, a total of 3,702,247.93 barrels of oil, and during the same period of time carried for Cosden & Company a total of 6,333,417.44 barrels of oil, which latter figure represents 63% of the total amount of oil carried by plaintiff for all parties during said period of time.

21st. That the court find that from April 1, 1919, to December 31, 1921, the plaintiff carried for outside or non-affiliated parties a total of 4,735,469.81 barrels of oil, and during the same period of time carried for Cosden & Company 21,006,142.41 barrels of oil, which latter figure repre-

sents 81% of the total amount of oil carried by plaintiff for all parties during said period of time.

22nd. That the court find that the actual costs and expenses of carrying oil by the plaintiff during the time involved in this case is as follows, to-wit:

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For 1918, 7.8 cents per barrel,
For 1919, 7.6 cents per barrel,
For 1920, 10.7 cents per barrel,
For 1921, 8.8 cents per barrel.

23rd. That the court find that the approximate distance the plaintiff carried the 645,120.64 barrels of oil owned by Cosden & Company, and which is referred to in paragraph 7 of the above referred to Agreed Statement of Facts, was forty-four miles.

24th. That the court find that if the plaintiff had charged 20 cents per barrel instead of the amounts actually charged by it for the carriage of all oil carried by it, for both affiliated and non-affiliated parties, from November 1, 1917, to December 31, 1921, its operating profits would have been as follows, to-wit:

For 1918—28 per cent,
For 1919—36 per cent,
For 1920—17 per cent,
For 1921—20 per cent,

and by "operating profits" is meant the gross amount received for the carriage of oil, less the actual cost and expense of carrying said oil.

25th. That the court find that if the plaintiff had charged 20 cents per barrel instead of the amounts actually charged by it for the carriage of all oil carried by it, for both affiliated and non-affiliated parties, from November 1, 1917, to December 31, 1921, its net profits would have been as follows, to-wit:

For 1918—23.6 per cent,
For 1919—30.5 per cent,
For 1920—12.2 per cent,
For 1921—A net loss of $50,000.00,

and by "net profits" is meant the gross amount received for the carriage of oil, less the actual cost and expense of carrying said oil, and all other costs and expenses.

26th. That the court find that the basis of the charges which were made by the plaintiff for the carriage of oil for Cosden & Company from November 1, 1917, to December 31, 1921, was to make the charge sufficient to take care of the actual cost and expense of carrying the oil.

27th. That the court find that the usual and customary "gathering charge" of common carrier pipe lines, operating in the vicinity of the plaintiff's pipe lines, and during the period from November 1, 1917, to December 31, 1921, was from 12 cents to 12½ cents per barrel.

28th. That the court find that the plaintiff, in the operation of its system of pipe lines, received oil anywhere along its lines that it was able to obtain oil, and regardless of pump stations or anything else.

29th. That the court find that customarily common
109 carrier pipe lines only receive oil in their trunk lines at tariff points and where they have pump stations.

30th. That the court find that plaintiff's system of pipe lines constitutes a gathering system and nothing more, and said system is only comparable to the "gathering system" or "gathering lines" of common carrier pipe lines, and the service or services rendered by the plaintiff, as compared with the service or services rendered by common carrier pipe lines, is nothing more than a gathering service.

31st. That the court find that on or about the 5th day of August, 1922, the Commissioner of Internal Revenue made the additional assessment or assessments involved herein; that on July 8, 1924, the plaintiff paid to the defendant the amount of said additional assessment or assessments, to-wit: $235,967.26; that on October 6, 1924, the plaintiff filed with the Commissioner of Internal Revenue its application for the refund of the amount of the aforesaid assessment or assessments; that on June 21, 1926, the aforesaid application for refund was denied; and on or about the 5th day of September, 1929, the Commissioner of Internal Revenue made the refunds referred to in paragraphs 7 and 8 of the above referred to Agreed Statement of Facts herein.

Conclusions of Law.

1st. That the court make special conclusions of law on each of the questions of law involved herein.

2nd. That the court conclude each and all of the questions of law involved herein in favor of the plaintiff and against the defendant.

3rd. That the court conclude, as a matter of law, with reference to the 2,022,248.41 barrels of oil that was transported by the plaintiff for Cosden & Company, between November 1, 1917, and March 31, 1919, and in connection with which the Commissioner of Internal Revenue made an additional assessment of $15,066.87 against the plaintiff, and which said additional assessment was obtained by raising the charge made against and collected from Cosden & Company by the plaintiff for said 2,022,248.41 barrels of oil from 5 cents per barrel to 20 cents per barrel, that the aforesaid additional assessment of $15,066.87, and each and every part thereof was erroneous and illegal, and that the plaintiff is entitled to judgment for the return of said sum of $15,066.87, together with interest thereon from the time of payment.

4th. That the court conclude, as a matter of law,
110 with reference to the 20,644,020.34 barrels of oil that was transported by the plaintiff for Cosden & Company between April 1, 1919, and March 31, 1921, and in connection with which the Commissioner of Internal Revenue made an additional assessment of $170,946.04 against the plaintiff, and which said additional assessment was obtained by raising the charge made against and collected from Cosden & Company by the plaintiff for said 20,644,020.34 barrels of oil from 10 cents per barrel to 20 cents per barrel, that the aforesaid additional assessment of $170,946.04, and each and every part thereof was erroneous and illegal, and that the plaintiff is entitled to judgment for the return of said sum of $170,946.04, less the sum of $5,793.76 thereof, which was refunded to the plaintiff subsequent to the commencement of this action, together with interest thereon from the time of payment.

5th. That the court conclude, as a matter of law, with reference to the 3,666,048.39 barrels of oil that was transported by the plaintiff for Cosden & Company between July 1, 1918, and March 31, 1919, and for which the plaintiff neither made nor collected any charge therefor, and in connection with which the Commissioner of Internal Revenue assessed against and collected from the plaintiff the sum of $36,666.50, which was obtained by computing a tax of 5 per

centum on a rate of 20 cents per barrel on the aforesaid 3,666,048.39 barrels of oil, that the basis of said additional assessment, to-wit: The sum of 20 cents per barrel was erroneous and illegal, and that the Commissioner of Internal Revenue instead of making said assessment on the basis of 20 cents per barrel should have made the same on the following basis, to-wit: The basis of 5 cents per barrel, being the charge that was made and collected by the plaintiff for all oil carried by it from November 1, 1917, to July 1, 1918, for Cosden & Company; but in no event, a higher basis than 10 cents per barrel, being the charge that was made and collected by the plaintiff for the carriage of all oil carried by it from April 1, 1919, to December 31, 1921, for Cosden & Company.

6th. That the court conclude, as a matter of law, with reference to the 99,950.31 barrels of oil which were located in a tank or tanks near Cushing, Oklahoma, and which had been gathered into said tank or tanks by the plaintiff from a lease or leases near Cushing, Oklahoma, and which on or about the 12th day of November, 1917, was sold by Cosden & Company, under written contract, to the Pierce Oil Corporation, and pursuant to which said written contract the said Pierce Oil Corporation laid or connected its line or lines to the aforesaid tank or tanks and transported the aforesaid barrels of oil away, and in connection with which the
111 plaintiff never made or collected any charge whatsoever, but that the Commissioner of Internal Revenue assessed and collected from the plaintiff $995.90, which said assessment was obtained by levying a tax of 5 per centum on a rate of 20 cents per barrel for the transportation of said 99,950.31 barrels of oil, that the plaintiff never at any time transported or carried the said oil within the meaning of the Revenue Acts of 1917 or 1918, and that the aforesaid additional assessment of $995.90, and each and every part thereof, was erroneous and illegal, and that the plaintiff is entitled to a judgment for the return of said sum of $995.90, together with interest thereon from the time of payment.

7th. That in the event, and only in the event, the court refuses to make the conclusions of law as outlined in the preceding paragraph and concludes that the plaintiff was liable for an assessment in connection with the 99,950.31 barrels of oil referred to in said preceding paragraph, and without,

in anywise, waiving the request outlined in the preceding paragraph, we request that the court conclude as a matter of law that the basis of said additional assessment, to-wit: The sum of 20 cents per barrel, was erroneous and illegal, and that the Commissioner of Internal Revenue instead of making said assessment on the basis of 20 cents per barrel should have made the same on the following basis, to-wit: (a) A gathering charge of 12 cents per barrel; or (b) A gathering charge of 12½ cents per barrel.

8th. That the court conclude, as a matter of law, that all of the oil that was carried by plaintiff for Cosden & Company from November 1, 1917, to December 31, 1921, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as plaintiff acted in connection with the purchase of said oil that it did so as the agent of Cosden & Company, and that it never, at any time, owned said oil, and that where the plaintiff made and collected a charge for carrying such oil such charge or charges is the sole and exclusive basis for the collection of a transportation tax, either under the 1917 or the 1918 Revenue Law.

9th. That the court conclude, as a matter of law, that there were no rates or tariffs of any pipe line company other than the plaintiff sufficient to furnish a basis for imposing any transportation tax for the carriage of oil by pipe line, either under the 1917 or the 1918 Revenue Law, against the plaintiff.

10th. That the court conclude, as a matter of law, that if the Commissioner of Internal Revenue, in determining, for the purpose of taxation the charge which the plaintiff would or should have made for the transportation of oil which it carried for Cosden & Company, or for any other com-
112 pany, without making any charge therefor, it had received payment therefor, had any right, power or authority to use or consider the rates or tariffs of other pipe line companies, he had no right, power or authority to use or consider said rates or tariffs save and except insofar as the same applied to gathering charges.

11th. That the court conclude, as a matter of law, that those parts of the Revenue Act of 1917, and the Revenue Act of 1918, which provide in substance and effect that in case

no charge, or an insufficient charge, for transportation is made by reason of ownership of the commodity transported, or for any other reason, the persons transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation or received sufficient payment therefor, and if the tax cannot be computed from actual bona fide rates and tariffs of the carriers involved it shall be computed on the basis of the rates or tariffs of other pipe lines for like service, as determined by the Commissioner, or if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner, are illegal and void for uncertainty.

12th. That the court conclude, as a matter of law, that those parts of the Revenue Act of 1917 and 1918, which provide for a so-called tax or liability when the pipe line company has made no charge or has made an insufficient charge for transportation of oil, are in contravention of article 3, section 11, of the constitution, vesting judicial power in the courts.

J. C. DENTON,
R. H. WILLS,
J. H. CROCKER,
I. L. LOCKEWITZ,
H. M. GRAY,
Attorneys for Plaintiff.

Which requests and conclusions were in part granted by the Court over defendant's objection and defendant allowed an exception.

Thereafter, defendant filed the following written requests for findings of facts and conclusions of law, which omitting capiton are as follows:

Defendant's Request for Findings of Fact.

The defendant, considering the facts hereinafter set forth to be proven and deeming them material to the due presentation of this case in the findings of fact request the court to find the same as follows:

1. The plaintiff, Cosden Pipe Line Company, is now 113 and has been since September, 1914, a corporation duly organized and existing under the laws of the State of Oklahoma, with its principal place of business in the City of Tulsa, in said State.

2. A. C. Alexander was from July 1, 1921, to June 30, 1922, and is now and has been since March 1, 1923, the Collector of Internal Revenue for the District of Oklahoma, and he is now and was at all times while he was Collector, as aforesaid, a resident of Oklahoma City, Oklahoma.

3. From and after its incorporation in 1914, and up to the present time, the plaintiff has continuously maintained and operated oil pipe lines in the State of Oklahoma, but not elsewhere.

4. During all the time from September, 1914, until after January 1, 1922, Cosden & Company was a corporation duly organized and existing under the laws of Oklahoma, with its principal place of business at Tulsa, Oklahoma, and during all of said time was operating an oil refinery at Tulsa, Oklahoma.

5. From and after its organization in September, 1914, continuously until after January 1, 1922, all of the stock of plaintiff was owned by Cosden & Company.

6. Plaintiff has never filed or promulgated tariffs for the carriage of oil by pipe line and has never maintained tariff stations.

7. All of the bookkeeping of the plaintiff was done in the same offices occupied by Cosden and Company. The personnel handling the business of the plaintiff in the field and operating its pipe lines were employees of the plaintiff.

8. Cosden and Company, as occasion required, advanced money to the plaintiff for the purchase of oil.

9. From November 1, 1917, to March 31, 1919, the plaintiff collected $580,301.10 for oil carried by it and collected taxes for the Government in the sum of $29,200.66. Later the Commissioner of Internal Revenue assessed additional taxes against the plaintiff, which included the sum of $15,066.87 obtained by raising the charge set up on the books of the plaintiff against Cosden and Company for transporting

2,022,248.41 barrels of oil from 5 cents per barrel to 20 cents per barrel. The additional taxes so assessed and collected also included the sum of $36,650.50 obtained by computing the tax on a rate of 20 cents per barrel on 3,666,048.39 barrels of oil transported by plaintiff and delivered to Cosden and Company at Tulsa, Oklahoma, without setting up a charge for such transportation on plaintiff's books.

10. From April 1, 1919, to December 31, 1921, plaintiff collected $2,821,450.09 for oil transported by it and collected tax for the Government in the sum of $226,128.64. Later the Commissioner of Internal Revenue assessed and collected from the plaintiff for oil transported during that period additional taxes, which included the sum of $170,946.04 obtained by raising the charge set up on the books of the plaintiff against Cosden and Company for 20,644,020.34 barrels of oil transported by the plaintiff and delivered to Cosden and Company from 10 cents per barrel, which was the charge set up on the books of the plaintiff, to 20 cents per barrel, and of that amount the sum of $5,793.76 has been refunded to the plaintiff.

11. In the operation of the plaintiff's business, where oil was purchased from any producers in the fields where it operated, such oil was purchased in the tanks of the producer. The oil was purchased in the name of the plaintiff, and the "run tickets" for the oil were issued in the name of the plaintiff. The oil so purchased was moved by the plaintiff from the tanks located on the property of the producer from whom the oil was purchased, through lateral pipe lines of the plaintiff, to storage tanks of the plaintiff on its tank farms or to its pipe lines to designation. The lateral pipe lines through which said oil was taken from producer's tanks were owned by plaintiff and were laid and attached by the plaintiff to such producer's tanks.

12. In some cases the oil was gathered from the field into large tanks composing so-called tank farms owned by plaintiff and was from such tanks pumped through the pipe lines of plaintiff to its destination. In moving the oil transported from the field by the plaintiff to its destination such oil sometimes, but not always, passed through one, two, three, and sometimes four different pumping stations before reaching its destination.

13. Common-carrier pipe lines, in the transportation of oil by pipe line, have what is commonly known as a trunk or main pipe line. This trunk or main pipe line is divided into tariff stations at intervals, at each of which is located a pumping station, and the rate charged for the transportation of oil is computed from such tariff stations to destination. In addition to the trunk or main pipe line, common-carrier pipe lines have lateral pipe lines that are called "gathering lines". Any pipe line reaching from any point where oil is purchased or produced to the trunk or main line or to storage tanks at or near the main or trunk line or to tank farms is called a gathering line, without regard to its size, the distance, or the amount of oil carried through such line to the trunk or main pipe line, or to the trunk or main pipe line storage tanks, or to a tank farm.

115 14. Common-carrier pipe lines, in the transportation of oil through their pipe lines, make a charge, separate from and in addition to the trunk or main line tariff covering movement of the oil through their main pipe lines, of what is universally known and defined as a "gathering charge".

15. The gathering charge is a sum paid for the service rendered in moving oil from the point where it is tendered to or received by the carrier, whether it be the working tank at the well of the storage tanks in the field, to the trunk or main line tariff stations, or to a tank farm of the carrier, or to main-line storage tanks. And the rate charged for such gathering service is a flat rate, being the same by the same carrier in the same field, whether the distance traversed by the gathering line be twenty-five yards or twenty-five miles.

16. Where a pipe line company maintains both a trunk or main line and gathering lines it is the universal practice not to accept oil into the main or trunk line at any place other than at the various tariff stations or where pumping stations are located. The plaintiff picked up and took oil into its lines at all points along its pipe lines where oil could be obtained.

17. The gathering charge of common carrier pipe lines operating in the same fields was 12½ cents per barrel.

18. The plaintiff collected from the Pierce Oil Company

for oil transported by the plaintiff from it a charge larger than the gathering charge of 12½ cents per barrel.

19. There is no evidence before the court that the plaintiff ever advised the Commissioner of Internal Revenue that the oil transported by the plaintiff and delivered to Cosden and Company was owned by Cosden & Company, and was therefore not subject to the tax, nor is there any evidence before the court that the plaintiff ever made claim for refund based thereon.

Conclusions of Law.

It is requested that the court adopt the following conclusions of law:

1. The movement of the plaintiff's oil through pipe lines owned by it was "transportation of oil by pipe line" within the meaning of subdivision (e) of Section 500 and subdivision (d) of Section 501 of the Revenue Act of 1918.

2. The rates or tariffs of other pipe lines for like services, as determined by the Commissioner of Internal Revenue, were properly used as the basis for the taxes assessed against the plaintiff.

3. Upon the findings of fact herein the plaintiff is not entitled to recover, and judgment should be entered
116 for the defendant.

Which requests were denied by the court and an exception allowed.

Thereafter, defendant filed motion for judgment which omitting caption is as follows:

Motion for Judgment.

Comes now the defendant and moves the court that judgment be given for the defendant, because

1. The plaintiff has failed to sustain the burden imposed upon it to prove that all or part of the taxes sought to be recovered back in this proceeding were wrongfully or unlawfully collected;

2. There is not sufficient evidence to support a judgment against the defendant.

ROY ST. LEWIS,
United States Attorney,
CHARLES S. HENDLER,
Special Attorney, Internal Revenue,
Attorneys for Defendant.

Filed June 30, 1930, Theodore M. Filson, Clerk. By Grace G. Butler, Deputy.

Motion denied and exception allowed defendant.

Thereafter, plaintiff filed motion for leave to file an amended and supplemental petition herein to conform to the evidence produced on the trial, and the court sustained said motion over the objection and exception of the defendant. Said order permitting the plaintiff to file said amended and supplemental petition, omitting caption being as follows:

Order.

Now, on this 15th day of December, 1930, the above entitled cause coming on for hearing upon the motion of the above named plaintiff for leave to file herein an amended and supplemental petition to conform to the evidence introduced upon the trial of said cause, and said plaintiff appearing by its attorney, R. H. Wills, and the defendant appearing by Roy St. Lewis, United States Attorney, and the court being fully advised in the premises;

It is, therefore, ordered, adjudged and decreed that said plaintiff be and it is hereby granted leave and permission to file herein within two days an amended and supplemental petition to conform to the evidence introduced upon the trial of said cause, a copy of which said petition is attached to the aforesaid motion, to all of which said defendant excepts, and its exception is hereby allowed.

EDGAR S. VAUGHT, United States Judge.

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117 Thereafter on July 3, 1931, and while said cause was under advisement upon the application of plaintiff the Court granted an order re-opening said cause for the

purpose of offering additional evidence on behalf of plaintiff, and which evidence was thereupon offered by way of stipulation in open Court.

Thereupon it was stipulated in open Court by counsel for both the plaintiff and the defendant that the additional assessments involved in this case were paid by the plaintiff to the defendant, Acel C. Alexander, Collector.

That thereafter on July 31, 1931, the Court made, entered and filed his findings of facts and conclusions of law in this cause, and to which the defendant at the time objected and was allowed an exception. Said findings of facts and conclusions of law together with defendant's exception thereto, omitting the caption are as follows:

Findings of Fact.

(1) The court finds each and all of the stipulated and agreed facts set out, stated and contained in the agreed statement of facts, which was entered into by the above named plaintiff, and the above named defendant by and through their respective attorneys of record and which said agreed statement of facts was filed herein prior to the commencement of the trial of said cause, and which said agreed statement of facts was introduced in evidence by the plaintiff upon the trial of said cause.

(2) The court finds that the additional assessment of $60,865.71 made against the plaintiff for the carriage of oil by plaintiff from November 1, 1917, to March 31, 1919, included $995.90 for 99,590.31 barrels of oil, which the Commissioner of Internal Revenue, in making said additional assessment, determined that the plaintiff carried for the Pierce Oil Corporation and made no charge therefor, and said additional assessment of $995.90 was obtained by computing the tax on a rate of 20¢ per barrel on said 99,590.31 barrels of oil; that said oil was collected in a tank on a tank farm of plaintiff's near Cushing, Oklahoma, and was carried by plaintiff to said tank from the lease or leases from which the same was produced, and which said lease or leases were located in the vicinity of Cushing, Oklahoma; that said oil was sold to the Pierce Oil Corporation by Cosden & Company on or about the 12th day of November, 1917, under a written

contract, and the same was delivered to the said Pierce Oil Corporation in the aforesaid tank, and that thereafter the Pierce Oil Corporation connected its lines to the aforesaid tank and carried said oil away.

(3) That as to the oil involved in the additional
118 assessments for the period from November 1, 1917, to March 31, 1919, and for the period from April 1, 1919, to December 31, 1921, other than the oil covered by the agreed statement of facts and the Pierce Oil Corporation oil referred to in the preceding paragraph, the plaintiff introduced no evidence save and except to the effect that the amount or amounts thereof were comparatively small.

(4) The court finds that from November 1, 1917, to December 31, 1921, the principal business of the plaintiff has been carrying oil for Cosden and Company; that during said period of time the plaintiff has never held itself out as a common carrier; and that the State of Oklahoma has never required the plaintiff to file or publish any rates or tariffs covering the carriage of oil.

(5) The court finds that from November 1, 1917, to December 31, 1921, the plaintiff filed with the Commissioner of Internal Revenue monthly returns as to the carriage of oil by it and paid the amount of taxes shown by said returns to be due and payable.

(6) The court finds that all oil carried by the plaintiff for Cosden and Company from November 1, 1917, to March 31, 1919, was owned by Cosden and Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as the plaintiff acted in connection with the purchase of said oil it did so as the agent of Cosden & Company, and that it never at any time owned said oil.

(7) The court finds that all oil carried by the plaintiff for Cosden and Company from April 1, 1919, to December 31, 1921, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as the plaintiff acted in connection with the purchase of said oil it did so as the agent of Cosden & Company, and that it never at any time owned said oil.

(8) The court finds that from a date several months prior to November 1, 1917, to July 1, 1918, the plaintiff charged,

collected and received from Cosden & Company five cents per barrel for all oil carried by it for the said Cosden & Company, during said period of time.

(9) The court finds that the plaintiff neither made nor collected nor received anything from Cosden & Company for any oil carried by it, for the said Cosden & Company between July 1, 1918, and March 31, 1919.

(10) The court finds that from April 1, 1919, to the present time the plaintiff has charged, collected and received from Cosden and Company ten cents per barrel for all oil carried by it for the said Cosden & Company, during said period of time.

(11) The court finds that, except for the year 1920,
119 plaintiff's revenues from the carriage of all oil carried by it, except where no charge or charges were made, were sufficient to take care of its operating expenses in connection with the carriage of such oil, or, in other words, the actual cost and expense of carrying said oil.

(12) The court finds that, except for the year 1920, the charges which the plaintiff made, collected and received from Cosden and Company for the carriage of all oil carried by it for the said Cosden and Company, except where no charge or charges were made, were sufficient to take care of the operating expenses in connection with the carriage of such oil, or, in other words, the actual cost and expense of carrying said oil.

(13) The court finds that the average of all charges made by the plaintiff for the carriage of all oil carried by it from November 1, 1917, to March 31, 1919, for all outside or non-affiliated parties, was 13 cents per barrel, and that this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(14) The court finds that the average of all charges made by the plaintiff for the carriage of all oil carried by it from April 1, 1919, to December 31, 1921, for all outside or non-affiliated parties was 16.4 cents per barrel, and this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(15) The court finds that the average of all charges made by the plaintiff for the carriage of all oil carried by it from November 1, 1917, to March 31, 1919, for all outside or non-affiliated parties, and for the 645,120.64 barrels of oil owned by Cosden & Company and carried by plaintiff for it during said period, and which said oil is referred to in paragraph 7 of the above referred to agreed statement of facts, was 11.74 cents per barrel, and that this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying the same.

(16) The court finds that the average of all charges made by the plaintiff for the carriage of all oil from November 1, 1917, to March 31, 1919, for all parties whether affiliated or non-affiliated or not, and including the 645,120.64 barrels of oil owned by Cosden & Company and carried by plaintiff for it during said period, which is referred to in paragraph 7 of the above referred to agreed statement of facts, was 9.5 cents per barrel, and this average is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carry-
120 ing the same.

(17) The court finds that the average of all charges made by the plaintiff for all oil carried by it from April 1, 1919, to December 31, 1921, for all parties, whether affiliated or non-affiliated or not, was 11.17 cents per barrel, and this charge is arrived at by taking into consideration both the total number of barrels of oil carried and the charge or charges made for carrying same.

(18) The court finds that from November 1, 1917, to March 31, 1919, the plaintiff carried for outside or non-affiliated parties a total of 3,702,347.93 barrels of oil, and during the same period of time carried for Cosden & Company a total of 6,333,417.44 barrels of oil, which latter figure represents 63 per cent of the total amount of oil carried by plaintiff for all parties during said period of time.

(19) The court finds that from April 1, 1919, to December 31, 1921, the plaintiff carried for outside or non-affiliated parties a total of 4,735,469.81 barrels of oil, and during the same period of time carried for Cosden & Company 21,006,-

142.41 barrels of oil, which latter figure represents 81% of the total amount of oil carried by plaintiff for all parties during said period of time.

(20) The court finds that the actual costs and expenses of carrying oil by the plaintiff during the time involved in this case is as follows, to-wit:

For 1918, 7.8 cents per barrel,
For 1919, 7.6 cents per barrel,
For 1920, 10.7 cents per barrel,
For 1921, 8.8 cents per barrel.

(21) The court finds that the approximate distance the plaintiff carried the 645,120.64 barrels of oil owned by Cosden & Company, and which is referred to in paragraph 7, of the above referred to agreed statement of facts, was fourty-four miles.

(22) The court finds that if the plaintiff had charged 20 cents per barrel instead of the amounts actually charged by it for the carriage of all oil carried by it, for both affiliated and non-affiliated parties, from November 1, 1917, to December 31, 1921, its operating profits would have been as follows, to-wit:

For 1918—28 per cent,
For 1919—36 per cent,
For 1920—17 per cent,
For 1921—20 per cent,

and by "operating profits" is meant the gross amount received for the carriage of oil, less the actual cost and expense of carrying said oil.

(23) The court finds that if the plaintiff had charged 20 cents per barrel instead of the amounts actually charged by it for the carriage of all oil carried by it, for both
121 affiliated and non-affiliated parties, from November 1, 1917, to December 31, 1921, its net profits would have been as follows, to-wit:

For 1918—23.6 per cent
For 1919—30.5 per cent,
For 1920—12.2 per cent,
For 1921—A net loss of $50,000.00,

and by "net profits" is meant the gross amount received for the carriage of oil, less the actual cost and expense of carrying said oil, and all other costs and expenses.

(24) The court finds that the basis of the charges which were made by the plaintiff for the carriage of oil for Cosden & Company from November 1, 1917, to December 31, 1921, was to make the charge sufficient to take care of the actual cost and expense of carrying the oil.

(25) The court finds that the usual and customary "gathering charge" of common carrier pipe lines, operating in the vicinity of the plaintiff's pipe lines, and during the period from November 1, 1917, to December 31, 1921, was from 12 cents to 12½ cents per barrel.

(26) The court finds that the plaintiff, in the operation of its system of pipe lines, received oil anywhere along its lines that it was able to obtain oil, and regardless of pump stations, or anything else.

(27) The court finds that customarily common carrier pipe lines only receive oil in their trunk lines at tariff points and where they have pump stations.

(28) The court finds that plaintiff's system of pipe lines constitutes a gathering system and nothing more, and said system is only comparable to the "gathering system" or "gathering lines" of common carrier pipe lines, and the service or services rendered by the plaintiff, as compared with the service or services rendered by common carrier pipe lines, is nothing more than a gathering service.

(29) The court finds that on or about the 5th day of August, 1922, the Commissioner of Internal Revenue made the additional assessment or assessments involved herein; that on July 8, 1924, the plaintiff paid to the defendant the amount of said additional assessment or assessments, to-wit: $235,967.26; that on October 6, 1924, the plaintiff filed with the Commissioner of Internal Revenue its application for the refund of the amount of the aforesaid assessment or assessments; that on June 21, 1926, the aforesaid application for refund was denied; and on or about the 5th day of September, 1929, the Commissioner of Internal Revenue made
122 the refunds referred to in paragraphs 7 and 8 of the above referred to agreed statement of facts herein.

(30) The court finds this action was instituted June 5, 1926.

Conclusions of Law.

Pursuant to the findings of fact hereinbefore set out, the Court concludes as to matters of law as follows:

(1) That since the capital stock of the plaintiff company was at all times owned by Cosden & Company, and since the plaintiff company was organized for the purpose of purchasing and transporting by pipe line the oil of said Cosden & Company, and since the organization, operation and maintenance of said plaintiff company, was merely for the convenience and accommodation of said Cosden & Company, the said plaintiff company had no occasion and was not bound in law to charge a higher rate for the transportation of the oil of Cosdon & Company than was actually necessary to meet the expenses of the operation of said plaintiff company.

(2) The court concludes as a matter of law that the Commissioner of Internal Revenue has no power to establish pipe line rates for the transportation of oil as between the plaintiff company and Cosden & Company except such power as is granted in the 1917 Revenue Act, Section 501, and the 1918 Revenue Act, Section 501 (d), and under said revenue acts where a rate has been established between plaintiff and Cosden & Company which is reasonable under all the circumstances, the same rate should be applied as between the same parties for the purposes of taxation where for any reason no rate has been charged.

(3) That with reference to the 2,022,248.41 barrels of oil that was transported by the plaintiff for Cosden and Company, between November 1, 1917, and March 31, 1919, and in connection with which the Commissioner of Internal Revenue made an additional assessment of $15,066.87 against the plaintiff, and which said additional assessment was obtained by raising the charge made against and collected from Cosden & Company by the plaintiff for said 2,022,248.41 barrels of oil from 5 cents per barrel to 20 cents per barrel, that the aforesaid additional assessment of $15,066.87, and each and every part thereof was erroneous and illegal, and that the plaintiff is entitled to judgment for the return of said sum of $15,066.87, together with interest thereon from the time of payment.

(4) That with reference to the 20,644,020.34 barrels of oil that was transported by the plaintiff for Cosden & Company between April 1, 1919, and March 31, 1921, and in connection with which the Commissioner of Internal Revenue made an additional assessment of $170,946.04 against
123 the plaintiff, and which said additional assessment was obtained by raising the charge made against and collected from Cosden & Company by the plaintiff for said 20,644,020.34 barrels of oil from 10 cents per barrel to 20 cents per barrel, that the aforesaid additional assessment of $170,946.04, and each and every part thereof was erroneous and illegal, and that the plaintiff is entitled to judgment for the return of said sum of $170,946.04, less the sum of $5,793.76 thereof, which was refunded to the plaintiff subsequent to the commencement of this action, together with interest thereon from the time of payment.

(5) That with reference to the 3,666,848.39 barrels of oil that were transported by the plaintiff for Cosden & Company between July 1, 1918, and March 31, 1919, and for which the plaintiff neither made nor collected any charge therefor, and in connection with which the Commissioner of Internal Revenue assessed against and collected from the plaintiff the sum of $36,666.50, which was obtained by computing a tax of 5 per centum on a rate of 20 cents per barrel on the aforesaid 3,666,048.39 barrels of oil, that the basis of said additional assessment, to-wit: The sum of 20 cents per barrel was erroneous and illegal, and that the Commissioner of Internal Revenue instead of making said assessment on the basis of 20 cents per barrel should have made the same on the following basis, to-wit: The basis of 10 cents per barrel. The court concludes that the charge of 10 cents per barrel is proper for the reason that the time covered by the transportation of said oil for which no charge was made covered time before and after the 10 cent rate went into effect and there is no evidence which enables the court to determine what quantity was transported during the time the respective rates were in effect.

(6) That with reference to the 99,950.51 barrels of oil which were located in a tank or tanks near Cushing, Oklahoma, and which had been gathered into said tank or tanks by the plaintiff from a lease or leases near Cushing, Oklahoma, and which on or about the 12th day of November,

1917, was sold by Cosden & Company, under written contract to the Pierce Oil Corporation, and pursuant to which said written contract the said Pierce Oil Corporation laid or connected its line or lines to the aforesaid tank or tanks and transported the aforesaid barrels of oil away, and in connection with which the plaintiff never made or collected any charge whatsoever, but that the Commissioner of Internal Revenue assessed and collected from the plaintiff $995.90, which said assessment was obtained by levying a tax of five per centum on a rate of 20 cents per barrel for the transportation of said 99,950.31 barrels of oil, that the plaintiff never at any time transported or carried the said oil
124 within the meaning of the Revenue Act of 1917 or 1918, except from the various leases from which the plaintiff purchased oil for said Cosden & Company to plaintiff's tank farm; and since the oil so transported was the property of Cosden & Company, and the rate of five cents per barrel was the rate then in effect as between plaintiff and Cosden & Company, the rate of 5 cents was the rate upon which the tax should have been based, and therefore, plaintiff is entitled to judgment based upon 5 per centum of 5 cents per barrel or $746.93 together with interest from date of payment.

(7) That all of the oil that was carried by plaintiff for Cosden & Company from November 1, 1917, to December 31, 1921, was owned by Cosden & Company from the time it entered the lines of the plaintiff and it commenced the carriage thereof, and insofar as plaintiff acted in connection with the purchase of said oil that it did so as the agent of Cosden & Company, and that it never, at any time, owned said oil, and that where the plaintiff made and collected a charge for carrying such oil or should have made a charge therefor, such charge or charges is the sole and exclusive basis for the collection of a transportation tax, either under the 1917 or the 1918 revenue law.

(8) That there were no rates or tariffs of any pipe line company other than the plaintiff sufficient to furnish a basis for imposing any transportation tax for the carriage of oil by pipe line, either under the 1917 or the 1918 revenue law, against the plaintiff.

(9) That if the Commissioner of Internal Revenue, in

determining, for the purpose of taxation the charge which the plaintiff would or should have made for the transportation of oil which it carried for Cosden & Company, or for any other company, without making any charge therefor, it had received payment therefor, had any right, power or authority to use or consider the rates or tariffs of other pipe line companies, he had no right, power or authority to use or consider said rates or tariffs save and except insofar as the same applied to gathering charges.

(10) That judgment should therefore be entered as hereinbefore stated, on the first claim of $15,066.87 together with interest thereon from the time of payment. On the second claim, $165,152.28, together with interest thereon from the time of payment, and on the third claim the sum of $18,333.25, together with interest thereon at the time of payment, and on the fourth claim, $746.92, together with interest thereon from the time of payment.

125 Dated: July 3, 1931. Exception allowed defendant.

EDGAR S. VAUGHT, District Judge.

Thereafter on July 3, 1931, the Court entered in this cause a judgment in favor of the plaintiff in accordance with his findings of facts and to which judgment the defendant at the time excepted and his exceptions were allowed.

Stipulation Settling Bill of Exceptions.

It is hereby stipulated and agreed by and between the parties in the above action, through their respective attorneys, that the foregoing Bill of Exceptions contains all the evidence material to the defendant's assignment of errors and all exceptions of the parties upon the trial of the above action in the United States District Court for the Western District of Oklahoma, and that the same be settled and filed as the settled Bill of Exceptions.

Dated: Oklahoma City, Oklahoma, March 1st, 1932.

J. C. DENTON,
R. H. WILLS,
Attorneys for Plaintiff,

HERBERT K. HYDE,
United States Attorney, for Western District of Oklahoma,

WILLIAM EARL WILES,
Assistant United States Attorney,
Attorneys for Defendant.

Settlement of Bill of Exceptions.

Upon the foregoing stipulation and consent of the attorneys for the respective parties, it is hereby ordered, that the foregoing is a correct Bill of Exceptions of said District Court in the above action, containing all the evidence material to the defendants' assignment of errors and all the exceptions of the parties upon the trial, and that the same be filed
126 as the settled Bill of Exceptions.

Dated: Oklahoma City, Oklahoma, March 2, 1932.

EDGAR S. VAUGHT,
DL United States District Judge.

Endorsed: Filed in District Court on March 2, 1932.

Petition for Appeal.

Conceiving himself aggrieved by the decision and
127 judgment of the United States District Court for the Western District of Oklahoma, made and entered in the above entitled cause on the 3d day of July, 1931, the defendant therein hereby appeals from said decision and judgment to the United States Circuit Court of Appeals for the Tenth Circuit, and prays that said appeal may be allowed.

Assignment of Errors.

And the said defendant assigns the following errors in the record of proceedings in this case:

1. That the Court erred in ordering judgment in the sum of One Hundred Ninety-nine Thousand Two Hundred Ninety-nine & 32/100 Dollars ($199,299.32), together with interest thereon at the rate of 6% per annum from the 8th day of July, 1924, to be entered in favor of plaintiff in this suit and against the defendant.

2. That the Court erred in refusing to direct that judgment be entered in favor of the defendant in this suit and against the plaintiff, dismissing plaintiff's petition herein.

3. That the Court erred in refusing to grant defendant's formal motion for judgment.

4. That the Court erred in refusing to grant each and every part of defendant's request for special findings of fact.

5. That the Court erred in the findings of fact as found by the Court and entered herein.

6. The Court erred in that the facts found by the Court do not support the judgment entered pursuant to the order of said Court.

7. That the Court erred in granting the plaintiff's motion for judgment.

Prayer for Reversal.

For which errors the defendant herein prays that
128 said decision and judgment of the District Court as aforesaid, dated July 3, 1931, in the above entitled cause, be reversed.

HERBERT K. HYDE,
United States Attorney,

WILLIAM EARL WILES,
Assistant United States Attorney,

Attorneys for Defendant.

Allowance of Appeal.

Appeal allowed as prayed and issuance of citation ordered returnable within forty days from date hereof. Defendant given an extention of time to prepare bill. of exception of ninety (90) days from this date.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court September 23, 1931.

Assignment of Errors.

Now comes the defendant by Herbert K. Hyde,
129 United States Attorney and William Earl Wiles, Assistant United States Attorney for the Western District of Oklahoma, and in connection with his appeal, assigns that in the record and proceedings and judgment entered in the above entitled cause, there is manifest error appearing therein to his prejudice in this, to-wit:

I.

That the Court erred in ordering judgment in the sum of One Hundred Ninety-nine Thousand Two Hundred Ninety-nine & 32/100 Dollars ($199,299.32), together with interest thereon at the rate of 6% per annum from the 8th day of July, 1924, to be entered in favor of plaintiff in this suit and against the defendant.

II.

That the Court erred in refusing to direct that judgment be entered in favor of the defendant in this suit and against the plaintiff, dismissing plaintiff's petition herein.

III.

That the Court erred in refusing to grant defendant's formal motion for judgment.

IV.

That the Court erred in refusing to grant each and every part of defendant's requests for special findings of fact.

V.

That the Court erred in the findings of fact as found by the Court and entered herein.

VI.

The Court erred in that the facts found by the Court do not support the judgment entered pursuant to the order of said Court.

VII.

130 That the Court erred in granting the plaintiff's motion for judgment.

By reason whereof the appellant prays that the aforesaid judgment may be reversed.

HERBERT K. HYDE,
United States Attorney,
WILLIAM EARL WILES,
Assistant United States Attorney,

Attorneys for Defendant.

Endorsed: Filed in District Court on Sept. 23, 1931.

Praecipe for Transcript.

To the Clerk of said Court:

Please prepare a transcript of the record to be filed
131 in the United States Circuit Court of Appeals, Tenth Circuit, and include in said transcript the following:

(1) Plaintiff's Petition.

(2) Defendant's Answer.

(3) Stipulation Waiving Jury Trial.

(4) Defendant's Motion for Judgment.

(5) Order Granting Plaintiff Leave to File Amended and Supplemental Petition.

(6) Plaintiff's Amended and Supplemental Petition.

(7) The Court's Written Findings of Facts and Conclusions of Law and Defendant's Exceptions to Same.

(8) The Journal Entry of Judgment of the Court.

(9) Notice of Appeal and Service of Same.

(10) Petition for Appeal and Order Allowing the Same.

(11) Defendant's Assignment of Errors.

(12) The Citation and Service of the Same.

(13) Orders of the Court Extending Time for Filing Bill of Exceptions and Docketing Appeal.

(14) Bill of Exceptions.

132 (15) This Praecipe for Transcript.

(16) Clerk's Certificate.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals, for the Tenth Circuit.

HERBERT K. HYDE,
United States Attorney, for the
Western District of Oklahoma,
WILLIAM EARL WILES,
Assistant United States Attorney,
for the Western District of Oklahoma,

Attorneys for Defendant.

J. C. DENTON,
R. H. WILLS,
I. L. LOCKEWITZ,
J. H. CROCKER,
J. P. GREVE,

Attorneys for Plaintiff.

Endorsed: Filed in District Court on March 2, 1932.

[Citation in proper form, directed to Appellee, with acceptance of service by counsel for said Appellee, was filed in the District Court on Sept. 25, 1931.]

(Clerk's Certificate to Transcript.)

United States of America, Western District of Oklahoma—ss.

I, Theodore M. Filson, Clerk of the District Court
133 of the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings, in said court, in case No. 3399, Law, Cosden

Pipe Line Company, a corporation, Plaintiff, vs. Acel C. Alexander, Collector of Internal Revenue, Defendant, as full, true and complete as the said transcript purports to contain and as called for by the praecipe for transcript of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Oklahoma City, in said District, this 25th day of March, A. D. 1932.

(Seal) THEODORE M. FILSON, Clerk.
By Grace G. Butler, Deputy.

Filed March 28, 1932. Albert Trego, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz:

Appearances

For appellant:
The clerk will enter my appearance as counsel for the appellant.

WILLIAM EARL WILES,
Assistant U.S. Attorney.
C. M. CHAREST,
Gen. Counsel.

Filed April 2, 1932. Albert Trego, clerk.

For appellee:
The clerk will enter my appearance as counsel for the appellee.

J. C. DENTON,
Tulsa, Okla.
R. H. WILLS,
Tulsa, Okla.

Filed April 1, 1932. Albert Trego, clerk.

Order of submission

Third day, September term, Wednesday, September 14th, A.D. 1932

Before Honorable ROBERT E. LEWIS, Honorable JOHN H. COTTERAL, and Honorable ORIE L. PHILLIPS, Circuit Judges.

This cause came on to be heard and was argued by counsel, T. H. Lewis, Jr., Esquire, appearing for appellant, and R. H. Wills, Esquire, and J. C. Denton, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

United States Circuit Court of Appeals, Tenth Circuit

No. 665—January term, 1933

Appeal from the District Court of the United States for the Western District of Oklahoma

ACEL C. ALEXANDER, COLLECTOR OF INTERNAL REVENUE, APPELLANT

v.

COSDEN PIPE LINE COMPANY, A CORPORATION, APPELLEE

[February 9, 1933]

T. H. Lewis, Jr., special attorney, Bureau of Internal Revenue (C. M. Charest, General Counsel, Bureau of Internal Revenue, and Herbert K. Hyde, United States attorney, were with him on the brief), for appellant.

J. C. Denton and R. H. Wills (J. H. Crocker, I. L. Lockewitz, and J. P. Greve were with them on the brief), for appellee.

Before LEWIS, COTTERAL, and PHILLIPS, Circuit Judges

PHILLIPS, Circuit Judge, delivered the opinion of the court.

This action was brought by the Cosden Pipe Line Company to recover Federal excise taxes paid on the transportation of oil by the Pipe Line Company during the period from November 1, 1917, to December 31, 1921. A jury was waived and the case tried to the court. At the close of the evidence, the United States requested findings of fact and conclusions of law, and moved for judgment in its favor. The court denied such requests and motion, made special findings of fact and conclusions of law, and gave judgment to the Pipe Line Company on its first claim for $15,066.87, on its second for $165,152.28, on its third for $18,333.25, and on its fourth for $746.92, and for interest.

The Pipe Line Company was organized in Oklahoma and has been doing business there since 1914. All of its stock is owned by Cosden & Company, an Oklahoma corporation, which operates a refinery at Tulsa. From November 1, 1917, to December 31, 1921, the principal business of the Pipe Line Company was that of carrying oil for Cosden & Company. The Pipe Line Company's business was wholly intrastate. It never held itself out as a common carrier, nor published any rates or tariffs covering the carriage of oil.

The Pipe Line Company did not own any of the oil transported by it between November 1, 1917, and December 31, 1921, and, insofar as the Pipe Line Company acted in connection with the purchase of the oil, it did so only as agent for Cosden & Company.

For some time prior to November 1, 1917, and up to July 1, 1918, the Pipe Line Company charged five cents a barrel, from July 1918

to March 31, 1919, it made no charge, and from April 1, 1919, to to the date of the trial it charged ten cents a barrel, for the transportation of oil for Cosden & Company. Such charges were sufficient to cover the cost of such transportation, and there is no proof that they were made in bad faith or to avoid taxation.

The assessments involved in this case are these: During the period from November 1, 1917, to March 31, 1919, the Pipe Line Company transported by pipe line and delivered to Cosden & Company 2,022,248.41 barrels of oil. For this service the Pipe Line Company made a charge of five cents a barrel, and paid an excise tax on that basis. The commissioner increased the basis from five cents to twenty cents a barrel, and assessed an additional tax of $15,066.87.

During the period from November 1, 1917, to March 31, 1919, the Pipe Line Company transported and delivered to Cosden & Company 3,666,048.39 barrels of oil for which no charge was made. The commissioner made an assessment thereon of $36,660.50, based on a rate of twenty cents a barrel.

During the period from November 1, 1917, to March 31, 1919, the Pipe Line Company transported for Pierce Oil Corporation 99,590.31 barrels of oil for which no charge was made. The commissioner made an assessment thereon of $995.90, based on a rate of twenty cents a barrel.

During the period from April 1, 1919, to December 31, 1921, the Pipe Line Company transported and delivered to Cosden & Company 20,644,020.34 barrels of oil. For this service the Pipe Line Company made a charge of ten cents a barrel, and paid a tax on that basis. The commissioner increased the basis from ten to twenty cents a barrel, and assessed an additional tax of $170,946.04.

The four assessments last mentioned were paid. Because of errors in computation, $5,793.74 of the amount paid on the last mentioned assessment was refunded.

The twenty-cent basis was based on the published tariffs of common carriers in that vicinity.

The court found as a matter of law that the rate of five cents charged for the 2,022,248.41 barrels was the correct basis, and that the assessment for $15,066.87 was void; that the rate of ten cents a barrel for the 20,644,020.34 barrels was the correct basis; that the additional assessment of $170,946.04 was void and that amount less $5,793.76 which had already been refunded, should be returned to the Pipe Line Company; that the basis of twenty cents a barrel on the 3,666,048.39 barrels transported for Cosden & Company, for which no charge was made, was erroneous, and that the correct basis was ten cents a barrel; that the basis of twenty cents a barrel on the 99,950.51 barrels transported for Pierce Oil Corporation, for which no charge was made, was erroneous, and that the correct basis was five cents a barrel.

Two refunds of taxes assessed under the Revenue Act of 1917, and eight refunds of taxes assessed under the Revenue Act of 1918 were

made to the Pipe Line Company. These refunds were allowed on the theory that the charges for transportation actually made determined the basis of the assessments, and the Commissioner was without authority to determine and fix any other basis.

The Revenue Act of 1917 applies to such transportation up to and including March 31, 1919. The Revenue Act of 1918 applied to such transportation on April 1, 1919, and thereafter. The applicable provisions of such acts are set out in note 1.*

The United States contends that the Pipe Line Company and Cosden & Company are in fact one corporation and not separate corporate entities; that the charges made by the Pipe Line Company were only bookkeeping entries and therefore this case falls under the provision of the statute giving the Commissioner the right to use the tariffs of other companies as a basis in arriving at the tax, or, if there are no tariffs, a reasonable rate, because the oil transported was owned by the company transporting it.

It is a well settled general rule that a corporation is a legal entity distinct from its individual members or stockholders. Pierce *v.* National Bank of Commerce (C.C.A. 8) 18 F. (2d) 40,

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* NOTE 1.—
The Revenue Act of 1917 (40 Stat. 300, 314, 315) in part provides:
"SEC. 500. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid . . . (d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line."
"SEC. 501. That the taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.
"In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: Provided, That in case of a carrier which on May first, nineteen hundred and seventeen, had no rates or tariffs on file with the proper Federal or State authority, the tax shall be computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the Commissioner of Internal Revenue."
The Revenue Act of 1918 (40 Stat. 1057, 1101, 1102) in part provides:
"SEC. 500. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the Revenue Act of 1917 . . . (c) a tax equivalent to 8 per centum of the amount paid for the transportation on or after such date of oil by pipe line."
"SEC. 501. (a) That the taxes imposed by section 500 shall be paid by the person paying for the services or facilities rendered. . . . (c) The taxes imposed by section 500 shall apply to all services or facilities specified in such section when rendered for hire, whether or not the agency rendering them is a common carrier. In case a carrier (other than a pipe line) principally engaged in rendering transportation services or facilities for hire does not because of its ownership of the goods transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such goods if the carrier received payment for such transportation, such tax, if it cannot be computed from actual rates or tariffs of the carrier, to be computed on the basis of the rates or tariffs of other carriers for like services as determined by the Commissioner. In the case of any carrier (other than a pipe line) the principal business of which is to transport goods belonging to it on its own account and which only incidentally renders service for hire, the tax shall apply to such services or facilities only as are actually rendered by it for hire. Nothing in this or the preceding section shall be construed as imposing a tax (1) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (2) upon the transportation of company material transported by the carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.
"(d) The tax imposed by subdivision (c) of section 500 shall apply to all transportation of oil by pipe line. In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax cannot be computed from actual bona fide rates or tariffs, it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner; or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner."

47; Donnell *v.* Herring-Hall-Marvin Safe Co., 208 U.S. 267; Pullman's Palace Car Co. *v.* Mo. Pac. Ry. Co., 115 U.S. 587; Aiello *v.* Crampton (C.C.A. 8) 201 Fed. 891. But there are certain exceptions to this general rule The existence of the corporation as a distinct entity is a legal fiction and, where to recognize it as such will justify wrong, protect fraud, or defend crime, the law will disregard this fiction. Pierce *v.* Bank, supra; McCaskill Co. *v.* United States, 216 U.S. 504. But the facts in the instant case do not bring it within any recognized exception to the general rule. See Meischke-Smith *v.* Wardell (C.C.A. 9) 286 Fed. 785, where, in a pipe line tax case, this precise question was ruled adversely to the contention here made by the United States.

We, therefore, conclude the fact that the Pipe Line Company's stock is owned by Cosden & Company does not make them a single corporate entity, and that they must be regarded as separate corporate entities.

The remaining question presented is: When a carrier by pipe line charges a rate which is less than the usual charge for such service, does the rate charged fix the basis for the assessment of excise taxes under the Revenue Acts of 1917 and 1918, or does the commissioner have the power to ascertain and fix the basis for such assessment from published tariffs, or, in the event there are no published tariffs, by determining a reasonable charge for the service.

Sec. 501 of the Revenue Act of 1917 reads in part as follows:

"In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation."

The language, "in case such carrier does not . . . receive the amount which as carrier it would otherwise charge," has reference only to cases where no charge is made. This is clearly indicated by the context. A carrier could not charge itself for services rendered to itself. Hence, if it owns the commodity carried, no charge could be made. Therefore the specifically enumerated reason for not receiving the amount it would otherwise charge, viz, "ownership of the commodity transported," would arise only in a case where no charge was made. That provision and the closing clause of the sentence, "if the carrier received payment for such transportation," clearly indicate Congress was dealing with cases where no charge is made.

The above-quoted portion of sec. 501 of the Revenue Act of 1917 is found, in a slightly different form, in sec. 501 (d) of the Revenue Act of 1918, as follows:

"In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the

tax which would be imposed if such person received payment for such transportation."

It will be noted that in the latter act Congress grants exemptions from the tax to carriers other than pipe-line carriers in certain cases where no charge for the transportation is made, and deals, separately in subsection "d", with cases in which pipe-line carriers make no charge for transportation. It will be further noted that in subsection "d" Congress by express language limits the provision to cases where no charge is made.

We, therefore, conclude that both sections 501 and 501 (d) apply only to cases where no charge is made. This is the departmental construction. All of the refunds above adverted to were made on the theory that the carrier had made a charge, and that such charge fixed and limited the basis for the tax.

Refunds were denied only in cases where the commissioner was of the opinion that the oil transported belonged to the Pipe Line Company and therefore the oil was transported without charge, and in cases where the Pipe Line Company transported oil for others without charge.

We conclude, therefore that where a bona fide charge was actually made the commissioner was without authority to compute the tax on a higher basis.

The Pipe Line Company transported 3,666,048.39 barrels of oil for Cosden & Company, and 99,590.31 barrels for the Pierce Oil Corporation, prior to March 31, 1919, for which no charge was made. The commissioner ascertained that the rates and tariffs of other carriers for like services was 12½ cents a barrel for the gathering service, and 7½ cents a barrel for trunk line transportation, and computed the tax on a basis of twenty cents a barrel. The court found that such transportation was only a "gathering" service and involved no trunk line transportation, and that the proper basis was ten cents a barrel for the first item and five cents a barrel for the second.

As to the oil transported for Cosden & Company for which no charge was made, the service involved both a gathering service and main line transportation. The oil was carried by lateral lines from the points of production to storage tanks. This was a gathering service. It was pumped from such tanks to the refinery of Cosden & Company, at Tulsa. This was main line transportation. The average distance of the transportation was 47 miles. As to the oil transported for Pierce Oil Corporation for which no charge was made, only a gathering service was rendered. The main or trunk line transportation was made by the Pierce Oil Corporation through its own lines.

The Pipe Line Company had no "rates or tariffs on file with the proper Federal or State authority." Therefore, the tax was properly "computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the commissioner." Sec. 501, Rev. Act 1917. The finding by the commissioner that the

basis or rates of other carriers for like service was 12½ cents for the gathering service and 7½ cents for main line transportation is fully supported by the evidence. But since the transportation for the Pierce Oil Corporation involved only a gathering service, the basis for the tax should have been 12½ cents a barrel instead of twenty cents a barrel.

It follows that the judgment of the trial court was excessive.

It is our conclusion that the tax of $36,660.50 on the transportation of oil for Cosden & Company was correct, and that $18,333.25 should be remitted from the amount recovered as of the date of the judgment. The tax on the transportation of oil for the Pierce Oil Corporation computed on the basis of 12½ cents a barrel amounts to $624.69. Therefore, the Pipe Line Company should also remit the sum of $375.71 from the amount recovered. It will, therefore, be ordered that the judgment be reversed unless, within twenty-five days from the filing of this opinion, the Pipe Line Company files in the clerk's office of the District Court for the Western District of Oklahoma a remittitur of said $18,333.25 and $375.71, and within ten days thereafter files with the clerk of this court a certified copy of the remittitur so filed. If such remittitur and certified copy are so filed, the judgment, less the amounts so remitted, will be affirmed. If such remittitur and certified copy are not filed within the time aforesaid, the judgment will be reversed and the case remanded. If the remittitur is not filed and certified, costs will be taxed against the Pipe Line Company.

Judgment

Twentieth Day, January term, Thursday, February 9th, A.D. 1933

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court for a new trial; and that Acel C. Alexander, collector of internal revenue, appellant, have and recover of and from Cosden Pipe Line Company, a corporation, appellee, his costs herein and have execution therefor; unless within twenty-five days from the filing of the opinion of this court, Cosden Pipe Line Company files in the office of the clerk of the said District Court a remittitur of $18,708.96 of the amount of the judgment recovered, as of the date of the judgment, and within ten days thereafter files with the clerk of this court a certified copy of the remittitur so filed; and that if such remittitur and certified copy thereof are so filed, the judgment of the said district court, less the amount so remitted, will be affirmed.

(Certified copy of remittitur)

In the District Court of the United States for the Western District of Oklahoma

No. 3399, Law

COSDEN PIPE LINE COMPANY, A CORPORATION, PLAINTIFF,

v.

ACEL C. ALEXANDER, COLLECTOR OF INTERNAL REVENUE FOR THE District of Oklahoma, defendant

Remittitur

Be it remembered that the United States Circuit Court of Appeals for the Tenth Circuit, on appeal from the final judgment of the District Court of the United States for the Western District of Oklahoma in the above-entitled cause, filed its opinion in said appeal on the 9th day of February 1933, wherein it held that said final judgment of the United States District Court for the Western District of Oklahoma was erroneous in allowing the recovery of taxes paid by the Cosden Pipe Line Company in the amount of $18,333.25 on oil transported by the said Cosden Pipe Line Company for Cosden & Company from November 1, 1917, to March 31, 1919, for which transportation no charge was made, and also held that said judgment was erroneous in allowing the recovery of taxes paid by the said Cosden Pipe Line Company in the amount of $375.71 on oil transported by the said Cosden Pipe Line Company for the Pierce Oil Corporation, and that unless a remittitur of said sums was filed in the United States District Court for the Western District of Oklahoma within twenty-five (25) days from the filing of said opinion said cause would be reversed and remanded for new trial.

Now, therefore, comes the said Cosden Pipe Line Company, and, in accordance with the aforesaid opinion of the United States Circuit Court of Appeals for the Tenth Circuit, hereby remits $18,708.96, being the total of the above-referred-to sum of $18,333.25 and the above-referred-to sum of $375.71, from the amount of the final judgment of the United States District Court for the Western District of Oklahoma, in the above entitled cause, as of the date of said judgment.

COSDEN PIPE LINE COMPANY.
By J. C. DENTON,
Vice President.

J. C. DENTON,
R. H. WILLS,
Attorneys for Cosden Pipe Line Company.

Attest:
[SEAL] A. D. KNEALE,
Ass't Secretary.

(Endorsed:) Filed Feb. 18, 1933. Theodore M. Filson, clerk.

Clerk's certificate

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Theodore M. Filson, clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the attached and foregoing to be a full, true, and correct copy of remittitur in sum of $18,708.96 filed by plaintiff on February 18, 1933, in case No. 3399, Law, Cosden Pipe Line Company, a corporation, plaintiff, *vs.* Acel C. Alexander, Collector of Internal Revenue for the District of Oklahoma, defendant, as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Oklahoma City, in said district, this 18th day of February, A.D. 1933.

[SEAL] THEODORE M. FILSON, *Clerk.*

Filed Feb. 23, 1933. Albert Trego, clerk.

Final judgment

Twenty-fifth day, January term, Thursday, February 23rd, A.D. 1933

Before Honorable ROBERT E. LEWIS and Honorable ORIE L. PHILLIPS, Circuit Judges.

This cause heretofore came on to be heard.

It now appears to the court that Cosden Pipe Line Company, a corporation, appellee herein, in compliance with the judgment of this court, entered on the 9th day of February 1933, duly filed in the office of the clerk of the District Court of the United States for the Western District of Oklahoma on the 18th day of February 1933, a remittitur of the sum of eighteen thousand seven hundred eight dollars and ninety-six cents ($18,708.96) in reduction of the amount of the judgment of said District Court, and thereafter and on the 23rd day of February 1933, duly filed a copy of such remittitur, certified under the hand of the clerk of said District Court, with the clerk of this court.

On consideration whereof it is now here ordered and adjudged by this court that the judgment and order of said District Court, so modified and reduced in amount by said remittitur, be and the same is hereby affirmed.

It is further ordered by the court that the mandate of this court issue forthwith to said District Court.

(On February 24, 1933, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgments of said court, was issued to the United States District Court, and on March 1, 1933, the receipt of the clerk of the said District Court for said mandate was received and filed.)

Clerk's certificate

United States Circuit Court of Appeals, Tenth Circuit

I, Albert Trego, clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Oklahoma, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion (except full captions, titles, and endorsements omitted in pursuance of the rules of the Suprme Court of the United States), had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said Circuit Court of Appeals wherein Acel C. Alexander, collector of internal revenue, was appellant and Cosden Pipe Line Company, a corporation, was appellee, no. 665, as full, true, and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at office in the city of Denver, Colorado, this 4th day of May, A.D. 1933.

[SEAL] ALBERT TREGO,
Clerk of the United States Circuit Court of Appeals,
Tenth Circuit.

U. S. GOVERNMENT PRINTING OFFICE 1933

Supreme Court of the United States

Order allowing certiorari

Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

PETITION FOR WRIT OF CERTIORARI

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In the Supreme Court of the United States

October Term, 1932

No. —

ACEL C. ALEXANDER, COLLECTOR OF INTERNAL REVENUE, petitioner

v.

COSDEN PIPE LINE COMPANY, A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

The Solicitor General, on behalf of the Collector, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Tenth Circuit entered in the above cause on February 9, 1933, as modified February 23, 1933.

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Oklahoma (R. 23–32, 110–119) is not reported. The opinion of the Circuit Court of Appeals is reported in 63 F. (2d) 663.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 9, 1933, and modified February 23, 1933, following the filing of a remittitur by

the petitioner herein. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

When a carrier by pipe line charges a rate which is less than the usual charge for such service, does the rate charged fix the basis for the assessment of excise taxes under the Revenue Acts of 1917 and 1918, or does the Commissioner have the power to ascertain and fix the basis for such assessment from published tariffs, or, in the event there are no published tariffs, by determining a reasonable charge for the service?

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are contained in the Appendix, pages 11–13, *infra*.

STATEMENT

Suit was brought in the District Court for the Western District of Oklahoma for refund of taxes collected for transportation of oil by pipe line. Jury was waived by stipulation (R. 9), and trial was had before the court upon an agreed statement of facts (R. 37–42) and additional evidence (R. 42–94). At the close of the evidence petitioner requested findings of fact and conclusions of law, and moved for judgment in its favor (R. 105–109). The District Court denied such requests and motion (R. 108, 109) and made special findings of fact (R. 23–29).

The facts may be summarized as follows:

Cosden Pipe Line Company, an Oklahoma corporation, hereinafter called the Pipe Line Company, operated a pipe line for the transportation of oil in the State of Oklahoma (R. 37) during the period from November 1, 1917, to December 31, 1921. During this time Cosden and Company, an Oklahoma corporation, hereinafter referred to as the Oil Company, operated an oil refinery in Tulsa, Oklahoma, and owned all of the capital stock of the Pipe Line Company (R. 37).

From November 1, 1917, to March 31, 1919, the Pipe Line Company transported by pipe line and delivered to the Oil Company 2,022,248.41 barrels of oil and set up on its books a charge of five cents per barrel for such transportation and paid excise taxes upon such basis. The Commissioner of Internal Revenue increased the basis from five cents to twenty cents and assessed an additional tax of $15,066.87 (R. 38).

During the same period the Pipe Line Company transported and delivered to the Oil Company 3,666,048.39 barrels of oil, for which transportation no charge was set up against the Oil Company. The Commissioner made an assessment thereon of $36,660.50, based on a rate of twenty cents a barrel. This rate was based upon published tariffs of other carriers in the same field (R. 38).

From April 1, 1919, to December 31, 1921, the Pipe Line Company transported and delivered to the Oil Company 20,644,020.34 barrels of oil and set

up on its books a charge of ten cents per barrel and paid tax thereon. The Commissioner increased the basis to twenty cents per barrel and assessed additional taxes of $170,946.04, which were paid, and $5,793.76 of the last assessment was refunded owing to errors of computation (R. 39).

During the period from November 1, 1917, to March 31, 1919, the Pipe Line Company transported for the Pierce Oil Corporation 99,590.31 barrels of oil, for which it made no charge. The Commissioner of Internal Revenue assessed a tax of $995.90, based on a rate of twenty cents per barrel (R. 110).

The Pipe Line Company never filed or promulgated tariffs for the carriage of oil by pipe line and never maintained tariff stations (R. 37).

The District Court held that since charge was made with respect to some of the oil delivered to Cosden and Company, the Commissioner was without authority to compute the tax upon a higher basis. The Circuit Court of Appeals sustained this decision. The Cosden oil for which no charge was made was held by the District Court to involve only a gathering service, the proper basis for which was ten cents per barrel. The Circuit Court of Appeals held that this transportation involved both a gathering service and a trunk-line service and that the Commissioner's application of a twenty-cent rate was correct. Hence the court below directed a remittitur of $18,333.25 with respect to this item.

With respect to the oil transported for the Pierce Oil Corporation for which no charge was made the District Court held that this involved only a gathering charge and fixed a rate of five cents per barrel, as that was the rate then in effect as between the Pipe Line Company and the Oil Company from which the oil had been purchased by the Pierce Oil Corporation (R. 31). The Circuit Court of Appeals held that only a gathering service was rendered, but that the tax should be computed on the basis of twelve and one half cents a barrel. Accordingly an additional remittitur of $375.71 was directed with reference to this item.

Remittiturs having been filed, the judgment of the District Court was affirmed in the amount of $180,590.36, with interest.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the tax upon the transportation of oil by pipe line imposed by the Revenue Acts of 1917 and 1918 must be based upon the charges actually made by a carrier transporting oil for its sole stockholder.

2. In construing the statutes so as to require the tax to be based upon a charge which is nominal in amount and which was fixed by the parties without regard to the prevailing commercial rates.

3. In adopting a construction of the statutes which permits the Commissioner of Internal Reve-

nue to apply the prevailing commercial rates only where no charge whatsoever is made by the carrier.

4. In failing to reverse the judgment of the District Court on the ground that the findings are not supported by the evidence.

5. In failing to reverse the judgment of the District Court because the findings were insufficient to support the judgment.

6. In holding that upon the law and the evidence the respondent was entitled to judgment in any amount.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below adopts a construction of the Revenue Acts which is opposed to the administrative interpretation of the statutes and results in a substantial reduction in the revenues. The statutes clearly reflect a Congressional purpose to make the prevailing commercial rates the basis for the tax. Where the carrier is dealing at arm's length with its customers the rates agreed upon between them will reflect the usual commercial rates and the statutes accordingly provide that the rates actually charged shall be the basis for the tax. Where for any reason the carrier does not receive "the amount which as a carrier it would otherwise charge" (Section 501, Revenue Act of 1917), the carrier is required to pay a tax equivalent to that which would be imposed if the carrier received payment. The court below has limited the application of this provision to those cases

where no charge whatsoever is made. On the other hand the administrative construction has been that the provision is applicable where no adequate charge is made by the carrier.

The statute as thus construed by the court below is quite out of harmony with the Congressional purpose since it permits the parties to fix a nominal charge for transportation, as was done in the instant case, and thus circumvent the intent of Congress to impose the tax upon the transportation of oil at prevailing commercial rates.

The tax on transportation of oil by pipe line imposed by the Revenue Act of 1917 was effective on November 1, 1917 (Section 500, Revenue Act of 1917). The findings show that for some time prior to November 1, 1917, and until July 1, 1918, the respondent charged five cents per barrel for the oil transported for Cosden and Company (R. 25). From July 1, 1918, until March 31, 1919, no charge was made for the transportation of such oil (R. 25). The tax on such transportation imposed by the Revenue Act of 1918 became effective April 1, 1919 (Section 500, Revenue Act of 1918), and from that time on respondent charged ten cents per barrel for the transportation of oil for Cosden and Company (R. 25).

The District Court found that such charges were sufficient to cover the cost of such transportation and that there is no proof that they were made in bad faith or to avoid taxation. The evidence, how-

ever, shows that the cost to the respondent for handling this oil was never as low as five cents per barrel, and in one year exceeded ten cents per barrel (R. 27). Accordingly, the District Court erred in its finding. Moreover, the Commissioner of Internal Revenue found that the rates of other carriers for a like service was twelve and one-half cents for the gathering service and seven and one-half cents for main-line transportation. The Circuit Court of Appeals held that this finding is fully supported by the evidence. But its decision sanctions a construction of the statutes which authorizes the computation of the tax upon rates which are less than the prevailing commercial rates.

There can be no objection, of course, to carriers making any arrangements with their customers which good business dictates or their relations permit. But it is inconceivable that Congress imposed a tax upon the transportation of oil by pipe line and intended it to be limited by a wholly inadequate charge made by the carrier. The court below holds that only where no charge whatsoever is made may the commercial rates be applied, but it is reasonably clear that Congress intended that the commercial rates should be applied in all cases. Where the carrier made a charge that charge would normally be the commercial rate, and where no charge was made the commercial rate is required to be taken into account. Since Cosden and Company was respondent's sole stockholder the activities of the two companies in fact constituted

a single business. But for the separate corporate entities the respondent would have been transporting its own oil and the statutory requirement for basing the tax upon the usual commercial rates would clearly be applicable. The construction which the court below has placed upon this statute leads to the absurd result that the tax upon a carrier's own oil or upon oil for which no charge is made is to be based upon the prevailing commercial rates, while the tax upon transportation for which a nominal and inadequate charge is made is to be based nevertheless upon such charge. A construction which involves such a result should be avoided, and the operation of the statute should not be made to depend upon rates which result in preferential treatment for respondent.

2. The decision below, holding that the Commissioner has no power to compute the tax on the basis of the prevailing commercial rates is in conflict with the decisions of several courts under closely related provisions of the revenue laws. In *Erie R. Co.* v. *United States,* 54 F. (2d) 173 (C.Cls.), it was held that telegraph messages transmitted for a railroad under a contract for exchange of services were taxable under Sections 500 and 501 of the Revenue Acts of 1918 and 1921 at the usual commercial rate, and not at a percentage of that rate specified in the contract. To the same effect are *Western Union Tel. Co.* v. *Delaware, L. & W. R. Co.,* 282 Fed. 925 (S.D.N.Y); *Motter* v. *Kemper,* 31 F. (2d) 1018 (C.C.A. 8th), reversing, on stipulation of the par-

ties, *Kemper* v. *Motter*, 25 F. (2d) 1010 (D.Kan.). Cf. *Hellmich* v. *Missouri Pacific Railroad Co.*, 273 U.S. 242. See also *United Cigar Stores Co.* v. *United States*, 72 C.Cls. 453, certiorari denied, 284 U.S. 666; *United Profit Sharing Corp.* v. *United States*, 70 C.Cls. 788, certiorari denied, 282 U.S. 881; *Colgate & Co.* v. *United States*, 66 C.Cls. 510. In none of these cases was it held that the tax could not be assessed at the ordinary commercial rates because payment of some sort was made.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

MAY 1933.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

REVENUE ACT OF 1917, c. 63, 40 STAT. 300, 314, 315

SEC. 500. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid * * * (d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line; * * *

SEC. 501. That the taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: * * *

REVENUE ACT OF 1918, c. 18, 40 STAT. 1057, 1101, 1102

SEC. 500. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the Revenue Act of 1917—

* * * * *

(e) A tax equivalent to 8 per centum of the amount paid for the transportation on or after such date of oil by pipe line; * * *

SEC. 501. (a) That the taxes imposed by section 500 shall be paid by the person paying for the services or facilities rendered.

* * * * * *

(c) The taxes imposed by section 500 shall apply to all services or facilities specified in such section when rendered for hire, whether or not the agency rendering them is a common carrier. * * *

(d) The tax imposed by subdivision (e) of section 500 shall apply to all transportation of oil by pipe line. In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax cannot be computed from actual bona fide rates or tariffs, it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

TREASURY REGULATIONS 49 (REVISED JUNE 1921)

ART. 92. * * *

Where the person so transporting is not a carrier, there is a taxable transportation of oil by pipe line within the meaning of section 501 (d), whenever the movement of said oil, effected by the owner thereof, is substantially similar to those movements which pipe-line carriers usually undertake and perform; or, in other words, where the movement is not merely local and incidental

to another business engaged in by the person so transporting, such as the producing or refining of oil. Thus, where a refiner maintains a main, trunk, or stem line from his refinery to an oil field or pool, the services he performs for himself are similar to those which pipe-line carriers would otherwise render to him. He should, therefore, pay the tax as though he had in fact employed the services of a carrier. If, on the other hand, the movement is from storage tanks to stills, which are a part of the same manufacturing unit, or from wells to flow tanks or storage tanks situate in the immediate vicinity, the movement is not such as a pipe-line carrier of oil would normally render, and consequently should not be taxed.

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